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THE HIGH AUTHORITY

DECISIONS

DECISION No. 5/56, of February 15, 1956, concerning the authorization of joint selling of fuels by the mining companies of the Ruhr coalfield forming the Geitling Ruhrkohlen-Verkaufsgesellschaft m.b.H. (Geitling Ruhr Coal Selling Agency Ltd.)

THE HIGH AUTHORITY

HAVING regard to Articles 4, 47 and 65 of the Treaty ;

HAVING regard to Section 12 of the Convention containing the Transitional Provisions ;

HAVING regard to Decision No. 37/53, of July 11, 1953, concerning the date upon which the prohibitions on cartels under Article 65 of the Treaty were to come into force (*Official Gazette of the Community, July 21, 1953, p. 153*) ;¹

HAVING regard to the applications of August 18 and 31, 1953, and to the supplementary applications of December 22, 1955, and February 6, 1956 ;

WHEREAS the following mining companies of the Ruhr coalfield (hereinafter referred to as "the Mining Companies"):

Steinkohlenbergwerk Heinrich Robert AG, Herringen

Bergwerke Essen-Rossenray AG, Essen

Bergbau AG Lothringen, Bochum

Mülheimer Bergwerksverein, Mülheim/Ruhr

Rheinpreussen AG für Bergbau und Chemie, Homberg/Niederrhein

Steinkohlenbergwerk Mathias Stinnes AG, Essen

Gebr. Stumm GmbH, Zeche Minister Achenbach, Brambauer/Westfalen

Hoesch Bergwerks AG, Dortmund

Gewerkschaft ver. Klosterbusch, Herbede/Ruhr

Steinkohlenbergwerk Friedrich der Grosse AG., Herne

Rheinelbe Bergbau AG, Gelsenkirchen

Graf Moltke Bergbau AG, Gelsenkirchen

Steinkohlenbergbau Hannover-Hannibal AG, Bochum

Bergwerksgesellschaft Walsum mbH, Walsum/Niederrhein

Gewerkschaft Sophia Jacoba, Hückelhoven/Aachen

Harpener Bergbau AG, Dortmund

Monopol Bergbau AG, Kamen

Gewerkschaft Alte Haase, Dortmund

Gewerkschaft Gottessegen, Dortmund

have, by their agreements of December 13, 1955, supplemented by their agreements of February 6, 1956, covenanted to sell fuel from their collieries jointly in the Common Market from April 1, 1956 to March 31, 1959 ;

¹ This reference applies to the German, French, Italian and Dutch editions of the *Official Gazette of the European Coal and Steel Community*, published in Luxembourg.

WHEREAS these Mining Companies, together with the great majority of the other mining companies of the Ruhr coalfield, have hitherto co-operated within a single Ruhr coal selling agency set up before the introduction of the Common Market, but have decided by the aforementioned agreements to discontinue selling through that agency on March 31, 1956;

WHEREAS the total output of hard coal and the total production of hard-coal coke for the Ruhr coalfield, apart from those of certain small collieries, are as follows:

Coal year	Hard coal		Hard-coal coke	
	in millions of metric tons	in % of the Common Market	in millions of metric tons	in % of the Common Market
1953-54	116·6	49·1	31·8	53·0
1954-55	119·7	49·4	30·6	49·7
1955-56	121·5	49·0	35·2	50·1

WHEREAS of this total tonnage part is consumed by the Ruhr enterprises themselves (collieries' own consumption, miners' concessionary coal, input of mine-owned coking-plants and briquetting-works), part exported by them to third countries, and part sold by them independently to consumers in the Common Market (works' own consumption¹, special delivery contracts, local sales in North Rhine-Westphalia²), so that the remainder sold jointly in the Common Market totals:

Coal year	Hard coal	Hard-coal coke
	in millions of metric tons	in millions of metric tons
1953-54	47·129	14·312
1954-55	50·029	15·262
1955-56	44·966	14·593

WHEREAS of this tonnage those Mining Companies which under the agreement of December 13, 1955, joined to form the Geitling Ruhr Coal Selling Agency (hereinafter referred to as "the Selling Agency") will sell approximately one-third, *i.e.*, taking the figures for the coal year 1955-56 as a basis, approximately the following tonnages:

	Hard coal	Hard-coal coke
in millions of metric tons	15·682	3·838
in % of Ruhr production	12·9%	10·9%
in % of Common Market production ...	6·3%	5·5%

¹ "Werksebstverbrauch" = deliveries to works with which the producing collieries are financially linked.

² "Landabsatz" = direct sales to local consumers.

WHEREAS such joint selling means better distribution of fuel, since in view of the multiplicity of types and grades of fuel, and of the varying intensity of demand, any attempt by individual mining companies to sell fuel independently would

- (a) be uneconomic both for the enterprises themselves and for the consumers and dealers,
- (b) lead, in the event of a decline in demand, to marked disparities in employment between the various mining companies of the Ruhr coalfield, and thus to social stresses among the workers there, and
- (c) result, in the event of the demand for Ruhr coal exceeding available supplies (a situation not necessarily justifying the declaration of a serious shortage in the Community), in inequalities in supplies to consumers and dealers ;

WHEREAS the permission granted under Sections 2, 2 and 6, 2 of the Articles of Association also to sell fuels

- (a) not produced by the collieries, plants, etc. of the member Mining Companies, or
- (b) produced by such collieries, plants, etc. (mining concessions, parts of such concessions, pits, coking-plants and briquetting-works) as have been acquired by the member Mining Companies subsequent to the conclusion of the agreement, whether as their own property, for usufruct, on lease, or in any other manner,

might cause the Selling Agency's influence in the market to be extended in a measure incompatible with Article 65, 2 of the Treaty ;

WHEREAS this additional sale of fuels, provided it is limited to 500,000 metric tons per annum, does not involve such an extension of influence, and whereas the High Authority reserves the right, as regards any increase in these additional sales over and above the tonnage mentioned, to proceed to a concrete examination of the situation, in conformity with the provisions of Article 65, 2 of the Treaty ;

WHEREAS, therefore, the permission granted under Sections 2, 2 and 6, 2 of the Articles of Association can only be approved in respect of a total of 500,000 metric tons per annum, and special authorization must be requested in respect of any additional tonnage ;

WHEREAS the other mining companies of the Ruhr coalfield, apart from some extracting very small quantities, have likewise joined to form two other selling agencies with very much the same aggregate output, to wit, the Präsident Ruhrkohlen-Verkaufsgesellschaft and the Mausegatt Ruhrkohlen-Verkaufsgesellschaft ;

WHEREAS all the mining companies belonging to these three selling agencies have at the same time set up certain joint organizations ;

WHEREAS no authorization under Article 65, 2 of the Treaty is required for some of these organizations, which perform no duties of a nature likely to restrict competition in the Common Market, *viz.*

- (a) the Ruhrkohlen-Exportgesellschaft m.b.H., responsible for the sale of fuel to areas outside the Common Market,

- (b) the Ruhrkohlen-Beratungsgesellschaft m.b.H., responsible mainly for inquiry into and encouragement of the technical and economic utilization of coal, for co-operation in matters of grading, for collective publicity for Ruhr coal, for market research and observation, and for transport problems,
- (c) the Ruhrkohle-Treuhandgesellschaft m.b.H., responsible as trustee, for all accounting, financial and clearing matters, for the administration of assets, and for the punched-card control system ;

WHEREAS various other joint measures regarding the setting-up of the Joint Office and the Standards Committee, the decisions of the Standards Committee, and a number of financial arrangements, are authorized by the High Authority in its Decision No. 8/56, of February 15, 1956 (*Official Gazette of the Community*, p. 82), in conformity with Articles 65, 2 and 53, *a* of the Treaty, in so far as such measures are necessary to the aim and object of each of the three Ruhr coal selling agencies, *viz.* the substantial improvement of fuel distribution, with due regard for the conditions prevailing in the coalmining industry ;

WHEREAS over and above the limits therein defined, all agreements, decisions and practices agreed and adopted among the mining companies of the Ruhr coalfield or among the three selling agencies with the aim of restricting competition are forbidden under Article 65, 1 of the Treaty, and whereas such agreements, decisions and practices cannot be authorized under Article 65, 2 of the Treaty, inasmuch as this would make it possible for the enterprises to determine prices and/or to control the production and marketing of a substantial proportion of the Community's coal ;

WHEREAS this authorization is intended, accordingly, to safeguard, by appropriate limitations and conditions, the independence of the three Ruhr coal selling agencies, and more particularly the possibility of developing an autonomous production and marketing policy within each agency ;

WHEREAS it would be incompatible with these requirements

- (a) for any director responsible for the management of one selling agency to be at one and the same time a director of another, the chairman of the Joint Office, a director of the Ruhrkohlen-Exportgesellschaft, or a director of the Ruhrkohle-Treuhandgesellschaft ;
- (b) for any agent or representative of one selling agency to act at one and the same time as agent or representative of another ;
- (c) for a selling agency to make funds accumulated by it available, in the form either of a loan or of a guarantee, to another selling agency, or to a mining company belonging to another agency ;
- (d) for any amendment to the Articles of Association, or to decisions by the General Meeting, the Supervisory Board or any other body constituted by the Selling Agency, to be contingent on the co-operation of enterprises not belonging to that Selling Agency ;

WHEREAS the Mining Companies forming the Geitling Ruhrkohlen-Verkaufsgesellschaft, inasmuch as they are entitled under the High Authority's Decision No. 8/56, of February 15, 1956, to co-operate with the Joint Office and the Standards Committee, are at the same time required to make use

of the powers conferred upon them by the Articles of the Selling Agency, the Joint Office, and the Standards Committee, and by the decisions of the Standards Committee, in order to achieve the object of such co-operation, viz. the offsetting of types and grades, the balancing of employment, and the elimination of disparities in the event of tightness in the supply situation ;

WHEREAS a joint-selling system affords the Mining Companies a position of considerable influence in the market, which in turn makes it possible to introduce into a marketing system practices *vis-à-vis* consumers and/or dealers which contravene the provisions of Article 4, *b* and *d* of the Treaty, and, in particular, the prohibition of discrimination and allocation of markets ;

WHEREAS, accordingly, the Mining Companies should, without prejudice to the special provisions of the present decision on the agreements of February 6, 1956, concerning trading regulations, be obliged by appropriate conditions to comply with the prohibitions contained in Article 4, *b* and *d* of the Treaty ;

WHEREAS it would, in particular, be an infringement of these provisions if the Mining Companies, or the Selling Agency, were to prevent their customers (wholesalers or consumers), either directly or indirectly (*e.g.* by making difficulties with regard to the provision of shipping space), contrary to the delivery terms, from taking delivery of their fuel ex-colliery, ex-coal port or f.o.b. Duisburg-Ruhrort and transporting it either by their own means or through a firm commissioned by them ;

WHEREAS the Mining Companies, or the Selling Agency, would likewise be contravening these provisions if, where their delivery terms allow rebates on sales to direct-buying wholesalers, they were to grant such rebates only provided the direct-buying wholesaler then sold direct to particular consumers or retailers, and were to refuse similar rebates if the wholesaler sold the fuel to other wholesalers for resale to consumers or retailers ;

WHEREAS the Mining Companies have, by their agreements of February 6, 1956, laid down the conditions on which the Geitling Ruhrkohlen-Verkaufsgesellschaft, formed by these enterprises for the joint selling of their fuel, may

(a) supply consumers and dealers direct.

(b) decline to supply consumers and dealers direct ;

WHEREAS these agreements specify, in particular, the following criteria for distinguishing consumers and dealers supplied direct from consumers and dealers excluded from direct supplies :

(a) for consumers :

a minimum consumption of 30,000 metric tons per annum ;

(b) for dealers :

a minimum turnover of 12,500 metric tons per annum obtained from the Selling Agency and sold within a particular sales area ;¹

a minimum turnover of 25,000 metric tons per annum obtained from the Ruhr coal selling agencies and sold within the same sales area ;

¹ The delimitation of the sales areas is shown in the annex to this decision.

a minimum turnover of 40,000 metric tons per annum obtained from Community coalfields and sold within the same sales area ;

a minimum turnover of 75,000 metric tons per annum obtained from Community coalfields and sold within the Common Market ;

WHEREAS agreements of this nature amount to an allocation of customers and markets within the meaning of Articles 4, *d* and 65, 1 of the Treaty ;

WHEREAS agreements of this nature may, notwithstanding, be authorized in accordance with Article 65, 2 of the Treaty, in so far as the system adopted

- (a) contributes to a substantial improvement in the distribution of fuel,
- (b) is not more restrictive than is necessary for the purpose, and does not give either the producer or the dealer the power to control or limit the selling of a substantial proportion of the fuel produced,
- (c) does not contravene the prohibition of discrimination (Article 4, *b* of the Treaty) ;

WHEREAS the agreements between the Mining Companies not to supply consumers with an annual consumption of less than 30,000 metric tons are compatible with these provisions, inasmuch as this limitation

- (a) is based on objective and non-discriminatory criteria,
- (b) does in fact conduce to a substantial improvement in the distribution of fuel, since the producers thus have to confine their direct sales to certain large-scale buyers ;

WHEREAS the Ruhr Selling Agency existing hitherto used in some exceptional cases to deal through certain wholesalers even when supplying consumers whose annual consumption was above the minimum tonnage laid down for direct supply ;

WHEREAS the agreement among the Mining Companies to retain this exception over a further two years does not constitute discrimination, since under this transitional regulation the supplying of such consumers is permitted, without discrimination, to all coal wholesalers in the Community ;

WHEREAS the High Authority further reserves the right to decide at a later date whether and on what conditions the Mining Companies will be within their rights in declining to supply through dealers such consumers as can in fact obtain their fuel direct from the producers but wish notwithstanding to buy them through dealers ;

WHEREAS the criteria laid down in the trading regulations regarding the direct supplying of dealers are, with few exceptions, also compatible with the provisions of Article 65, 2 of the Treaty cited above, since

- (a) they help to delimit, in accordance with the particular characteristics of the coal trade, the activities of the different types of wholesaler (direct-buying wholesalers, other wholesalers), and consequently contribute towards a substantial improvement in the distribution of fuel ;
- (b) in view of the size of the sales areas, the probable number of wholesalers operating there, and other features of the different areas (*e.g.*

ratio of sales of fuel from a selling agency to sales of fuel from other coalfields), and in view of the revision clause (amendment of the conditions of admission should more than 10 per cent of the dealers previously admitted be ruled out), the system adopted for delimiting the sales areas neither has discriminatory effects nor puts a limited number of dealers in the sales areas in a position to restrict competition in a manner incompatible with the provisions of Article 65, 2 of the Treaty ;

WHEREAS the further condition prescribed for entitlement to direct buying,

namely, that the dealer shall have marketed within his sales area a minimum of 25,000 metric tons per annum of fuel obtained from the Ruhr coal selling agencies,

does, however, mean that the dealer, in order to gain the advantage of direct buying, will choose to obtain fuel up to the specified quantity of 25,000 metric tons from the other two Ruhr coal selling agencies, and thus will defer buying from producers in other coalfields ;

WHEREAS this criterion

- (a) gives rise to discrimination, more particularly *vis-à-vis* producers in other coalfields of the Community,
- (b) is more restrictive than is necessary for the purpose of delimitation, which is simply to establish a norm for a given volume of wholesale trading ;

WHEREAS this section of the agreements on trading regulations is thus incompatible with the prohibition contained in Article 4, *b* of the Treaty and with the provisions of Article 65, 2 of the Treaty, and accordingly cannot be authorized ;

WHEREAS in regard to the entitlement of wholesalers to direct supplies the Ruhr coal selling organization existing hitherto used to follow a system which did not lay down equal conditions for all dealers within the Common Market ;

WHEREAS, accordingly, the regulations now adopted by the Mining Companies must, in order to obviate unlawful discriminations between dealers in the Common Market, be so implemented as to ensure that all dealers in the Common Market have the same chance of being admitted as direct buying wholesalers, on the basis of their purchases over the preceding coal year ;

WHEREAS the new trading regulations contain a special transitional regulation to the effect that, irrespective of the new criteria laid down for the future, those dealers shall be admitted for the time being as direct buying wholesalers who either

- (a) were already being treated as direct-buying wholesalers during the coal year 1955-56, or
- (b) can prove that, during the coal year 1955-56, they complied with the conditions then entitling to treatment as direct-buying wholesalers,

until such time as it is possible to ensure adequate supplies of fuel from the Selling Agency over a whole coal year ;

WHEREAS there is no objection to such a stipulation inasmuch as it facilitates the transition from the old regulations to the new ;

WHEREAS this transitional regulation must, nevertheless, be limited in its application to the coal year 1956-57, since otherwise a distinction not justified by the facts of the case would grow up between

- (a) the dealers admitted under this transitional regulation (mainly dealers established in the German Federal Republic, who would not be required, in particular, to achieve the highest of the reference tonnages specified, namely, a turnover of 75,000 metric tons per annum within the Community), and
- (b) the dealers admitted only under the new regulations (mainly dealers established outside the German Federal Republic, who would have to prove that they had in fact achieved this figure of 75,000 metric tons per annum) ;

WHEREAS the Mining Companies have further covenanted to implement the trading regulations only in respect of dealers in those territories of the Common Market in which similar non-discriminatory regulations exist in respect of the activities of all dealers in the Common Market ;

WHEREAS this categorical restriction amounts in itself to a discrimination, since it means that dealers in the Common Market territories concerned will be treated differently from those in the other territories ;

WHEREAS there is no justification in fact for this unequal treatment, since

- (a) it is the duty of the High Authority to take action against existing discriminations within the Common Market,
- (b) a producer may not counter a discrimination practised by others against particular dealers by similarly discriminating against these dealers ;

WHEREAS this section of the agreements on trading regulations is, therefore, inconsistent with the prohibition contained in Article 4, *b* of the Treaty and with the provisions of Article 65, 2 of the Treaty, and accordingly cannot be authorized ;

WHEREAS the trading regulations adopted by the Mining Companies in respect of joint selling through the Geitling Ruhrkohlen-Verkaufsgesellschaft are identical with the trading regulations laid down for the other two Ruhr coal selling agencies ;

WHEREAS the Mining Companies have, notwithstanding, agreed that any amendment of their trading regulations at any time after April 1, 1957, will require a majority of 60% of the votes of all member Mining Companies, a necessary prerequisite being that it should be possible to amend the trading regulations of the Geitling Ruhrkohlen-Verkaufsgesellschaft where the Mining Companies consider, in the light of one year's experience, that such amendment is desirable, independent of developments in the other selling agencies, and independent of any co-operation on the part of those mining companies which do not belong to the Geitling Ruhrkohlen-Verkaufsgesellschaft ;

WHEREAS the agreements entered into by the Mining Companies on December 13, 1955, and February 6, 1956, regarding joint selling through the Geitling Ruhrkohlen-Verkaufsgesellschaft and the introduction of trading regulations are, accordingly, necessary for any substantial improvement of the distribution of fuel ;

WHEREAS these agreements, in conjunction with the restrictions and conditions contained in this decision, do not go further than is necessary for their purpose, and whereas in view of the degree of this Selling Agency's influence upon the market, they do not give the Mining Companies the power to determine prices or to control or restrict production or distribution in respect of a substantial proportion of the fuel in the Common Market ;

WHEREAS the High Authority will exercise constant supervision to ensure that the parties concerned are abiding by the terms of the authorization granted, and are, in particular, observing the restrictions and conditions therein contained, and that the corpus of measures introduced by them neither restricts competition more than is necessary for the purpose nor contravenes any other provisions of the Treaty ;

WHEREAS, accordingly, the corpus of agreements is, in conjunction with the necessary restrictions and conditions, compatible with the provisions of Article 4, *b* and *d* and of Article 65, 2 of the Treaty,

DECIDES :

PART ONE

JOINT SELLING

Article 1

The agreements entered into by the following Mining Companies :

Steinkohlenbergwerk Heinrich Robert AG, Herringen ;

Bergwerke Essen-Rossenray AG, Essen ;

Bergbau AG Lothringen, Bochum ;

Mülheimer Bergwerksverein, Mülheim/Ruhr ;

Rheinpreussen AG für Bergbau und Chemie, Homberg/Niederrhein ;

Steinkohlenbergwerk Mathias Stinnes AG, Essen ;

Gebr. Stumm GmbH, Zeche Minister Achenbach, Brambauer/Westfalen ,

Hoesch Bergwerks AG, Dortmund ;

Gewerkschaft ver. Klosterbusch, Herbede/Ruhr ;

Steinkohlenbergwerk Friedrich der Grosse AG, Herne ;

Rheinlbe Bergbau AG, Gelsenkirchen ;

Graf Moltke Bergbau AG, Gelsenkirchen ;

Steinkohlenbergbau Hannover-Hannibal AG, Bochum ;

Bergwerksgesellschaft Walsum mbH, Walsum/Niederrhein ;

Gewerkschaft Sophia Jacoba, Hückelhoven/Aachen ;

Harpener Bergbau AG, Dortmund ;

Monopol Bergbau AG, Kamen ;

Gewerkschaft Alte Haase, Dortmund ;

Gewerkschaft Gotteseugen, Dortmund ;

concerning joint selling of fuel from their collieries within the Common Market,

as contained under heads 1 and 2a of the Articles of Association of the Geitling Ruhrkohlen-Verkaufsgesellschaft m.b.H., and in Annex 1 to the agreements of December 13, 1955 (registered under No. 1268/1955 at the offices of Ewald Leveloh, notary public, Essen) and supplemented by the additional agreements of February 6, 1956 (registered under No. 153/1956 at the offices of Ewald Leveloh, notary public, Essen), are hereby authorized, subject to any dismissal, restriction or condition contained in the Articles hereafter enumerated.

Article 2

The joint selling of fuel not produced by the collieries, plants, etc. of the member Mining Companies (Section 2, 2 of the Articles of Association), or produced by such collieries, plants, etc. as shall have been acquired by the member Mining Companies subsequent to the conclusion of the agreement of December 13, 1955, whether as their own property, for usufruct, on lease, or in any other manner (Section 6, 3 of the Articles of Association), is authorized only in respect of a total of 500,000 metric tons per annum. Any joint selling of tonnages over and above this figure shall require special authorization by the High Authority.

Article 3

Authorization is granted subject to the following conditions:

1. Members of the Management of the Selling Agency must not at one and the same time hold any post as
 - (a) member of the Management of the Präsident Ruhrkohlen-Verkaufsgesellschaft;
 - (b) member of the Management of the Mausegatt Ruhrkohlen-Verkaufsgesellschaft;
 - (c) chairman of the Joint Office set up by the three Ruhr coal selling agencies;
 - (d) member of the Management of the Ruhrkohlen-Exportgesellschaft m.b.H.
 - (e) member of the Management of the Ruhrkohle-Treuhandgesellschaft m.b.H.
2. Agents and representatives of the Selling Agency must not at one and the same time act as agents or representatives of the Präsident Ruhrkohlen-Verkaufsgesellschaft, or of the Mausegatt Ruhrkohlen-Verkaufsgesellschaft.
3. The Selling Agency must not out of its own funds, either directly or through the Ruhrkohle-Treuhandgesellschaft m.b.H., advance loans or furnish guarantees to any other Ruhr coal selling agency, or to any mining company belonging to such a selling agency.
4. The Selling Agency shall establish and implement its general conditions governing the marketing of its products, and in particular the provisions concerning the direct supplying of consumers and direct supplying of dealers, as well as any further agreements limiting the activities of a dealer to a

specific geographical area, in such a manner that the said conditions and agreements shall not contravene the prohibitions contained in Article 4, *b* and *d* of the Treaty. This provision shall in no way affect the restrictions and conditions contained in Part Two of this decision, regarding agreements entered into by the enterprises concerned in respect of trading regulations.

5. Where the delivery terms of the Mining Companies or of the Selling Agency allow delivery ex-colliery or ex-coal port, neither the Mining Companies nor the Selling Agency may prevent the buyer from taking delivery of his fuel ex-colliery or ex-coal port and transporting it either by his own means or through a firm commissioned by him.

6. Where the delivery terms of the Mining Companies or of the Selling Agency allow delivery f.o.b. Duisburg-Ruhrort, neither the Mining Companies nor the Selling Agency may prevent the buyer from taking delivery of his fuel f.o.b. Duisburg-Ruhrort and transporting it either by his own means or through a firm commissioned by him.

7. Should the buyer wish to transport his fuel either by his own means or through a firm commissioned by him, neither the Mining Companies nor the Selling Agency may discriminate against him in relation to other buyers regarding transport arrangements, and more particularly regarding the provision of shipping space.

8. Where the Mining Companies or the Selling Agency grant certain rebates to direct-buying wholesalers on purchases for resale to consumers and retailers, such wholesalers shall be granted the same rebates even if they supply the fuel to other wholesalers for resale by them to these consumers and retailers.

9. The Mining Companies and the Directors of the Selling Agency shall make every effort within the powers vested in them under

- (a) the Articles of Association of the Geitling Ruhrkohlen-Verkaufsgesellschaft m.b.H. dated December 13, 1955,
- (b) the agreement instituting a Standards Committee, dated December 13, 1955,
- (c) the decisions taken by the Standards Committee,
- (d) the agreement instituting a Joint Office, dated December 13, 1955,

to avoid an inequitable distribution among the workers of the reduced number of jobs which might result from any decline in demand, and to avoid inequalities in deliveries in the event of tightness in the supply situation.

10. The Selling Agency shall communicate to the High Authority without delay

- (a) all decisions by the General Meeting and by the Supervisory Board ;
- (b) all agreements by which the Ruhrkohle-Treuhandgesellschaft m.b.H. is authorized, as trustee, to handle all accounting, financial and clearing matters, the administration of assets, and the punched-card control system ;
- (c) all amendments and supplements to the decisions and agreements specified under (a) and (b) above.

PART TWO

TRADING REGULATIONS

Article 4

The agreements entered into by the Mining Companies listed in Article 1 above, concerning the introduction of trading regulations with effect from April 1, 1956,

as embodied in the agreements of February 6, 1956 (registered under No. 153/1956, at the offices of Ewald Leveloh, notary public, Essen), are hereby authorized, subject to any dismissal, restriction or condition contained in the Articles hereafter enumerated.

Article 5

1. The agreement entered into by the Mining Companies to make the wholesale trade responsible for all transactions with industrial consumers whose consumption over the past coal year has not exceeded 30,000 metric tons of hard coal, hard-coal coke and hard-coal briquettes (I, 1 and 3 of the trading regulations) is hereby authorized.

2. The agreement entered into by the Mining Companies to make the coal wholesale trade responsible also, up to and including March 31, 1958, for transactions with those industrial consumers whose consumption over the coal year 1955-56 has in fact been in excess of 30,000 metric tons of the fuels mentioned in paragraph 1 above, but who, by way of exception have up to now been supplied through the coal wholesale trade (I. 2 of the trading regulations) is hereby likewise authorized.

3. The High Authority reserves the right to decide at a later date whether industrial consumers with a consumption in excess of 30,000 metric tons of the fuels mentioned in paragraph 1 above can be refused facilities for obtaining supplies through the trade if they desire to buy in this way.

Article 6

The agreement entered into by the Mining Companies to make the coal wholesalers responsible for supplying the coal retail trade (I, 4 of the trading regulations) is hereby authorized.

Article 7

The agreement entered into by the Mining Companies regarding the admission of dealers as coal wholesalers (II, 1 of the trading regulations and annex) is hereby authorized in so far as the direct supplying of any coal wholesaler (whereby he becomes a "direct-buying wholesaler") is made conditional upon the following :

1. Such wholesaler shall in the previous coal year have sold in the Common Market not less than 75,000 metric tons of hard coal, hard-coal coke, hard-coal briquettes, brown-coal briquettes, low-temperature coke of lignite and/or bituminous coal from Community coalfields, and/or of gas coke.

2. Such wholesaler shall in the previous coal year have sold in the sales area to which he is admitted¹ not less than 40,000 metric tons of the fuels mentioned in paragraph 1 above from Community coalfields, and/or of gas coke.

3. Such wholesaler shall in the previous coal year have sold in the sales area concerned not less than 12,500 metric tons of fuels obtained from the Selling Agency.

4. Such wholesaler shall meet the requirements usually demanded of a wholesaler (*e.g.* solvency, domicile in the sales area, stock-keeping facilities, acquaintance with the market and with the commodities concerned, a large clientèle, a considerable range of *types and grades marketed*). In respect of stock-keeping, this shall apply only in so far as such stock-keeping can be reasonably expected, having regard to the transport regulations obtaining (particularly the freight rates), and to the nature of the trading area supplied by the dealer concerned.

Article 8

The agreement entered into by the Mining Companies regarding the admission of dealers as coal wholesalers (II, 1 of the trading regulations and annex) is not authorized where the direct supplying of any coal wholesaler is made conditional upon the further provision that such wholesaler shall in the previous coal year have sold in the sales area to which he is admitted not less than 25,000 metric tons of fuels obtained from the Ruhr coal selling agencies.

Article 9

In so far as this decision authorizes the agreements entered into by the Mining Companies regarding the admission of dealers as coal wholesalers, such authorization shall be contingent on the following restrictions and conditions:

1. The rules regarding the admission of dealers as direct-buying coal wholesalers shall be applied in such a manner that the Selling Agency shall at the beginning of each coal year give to all dealers within the Common Market, without discrimination, the opportunity of producing evidence of entitlement to direct buying, on the basis of the tonnages of fuels from the Selling Agency and fuels from Community coalfields bought by them, directly or indirectly, over the previous coal year.

2. In respect of the first admission, for the coal year 1956-57, this regulation shall be implemented as follows:

- (a) In so far as admission as a wholesaler depends on the dealer's having over the previous coal year sold not less than 12,500 metric tons of fuel obtained from a selling agency (*cf.* Article 7, 3 above), the dealer shall be deemed to fulfil the requirements if he can show
 - (i) that he obtained this tonnage during the coal year 1955-56 directly from one or more of the six former Ruhr coal selling agencies, or

¹ The delimitation of the sales areas is shown in the annex to this decision. Cf. also Article 9, 5.

- (ii) that he obtained this tonnage during the coal year 1955-56 indirectly, *i.e.* from a wholesaler firm or organization which in its turn obtained that tonnage directly or indirectly from one or more of the six former Ruhr coal selling agencies.
- (b) If, in accordance with these principles, the tonnage of Ruhr coal obtained by any wholesaler over the coal year 1955-56 is not less than 12,500 metric tons, that wholesaler shall then be entitled to claim admission by any selling agency he may select.
- (c) If the tonnage of Ruhr coal obtained by any dealer over the coal year 1955-56 is greater than 12,500 metric tons, each additional tonnage shall entitle to admission by another selling agency, provided that additional tonnage is not less than 12,500 metric tons in each case.

3. Furthermore, under the agreement entered into by the Mining Companies (II, 2 of the trading regulations), admission as direct-buying wholesalers shall be extended, during a transition period up to the end of the coal year 1956-57, to those wholesalers who either

- (a) were already supplied as direct-buying wholesalers during the coal year 1955-56, or
- (b) can show that during the coal year 1955-56, they fulfilled the conditions then obtaining for admission as direct-buying wholesalers.

The agreement entered into by the Mining Companies (II, 2 of the trading regulations) to retain this transitional regulation until such time as it has been possible to ensure an adequate supply of fuel through the Selling Agency over a whole coal year is not authorized.

4. Should it emerge, upon the expiry of the transition period specified in paragraph 3 above, that, in the implementation of the rules authorized under Article 7 above, more than 10 per cent. of the dealers trading as wholesalers within a given sales area during the coal year 1955-56 no longer fulfil the conditions laid down for admission as direct-buying wholesalers, the Selling Agency shall, in accordance with the agreements entered into on February 6, 1956, regarding trading regulations (II, 2, fourth paragraph), so amend its conditions as to enable not less than 90% of the dealers trading as wholesalers in the sales area concerned during the coal year 1955-56 to be admitted.

5. Any alteration of the sales areas as given in the annex to this decision shall require the authorization of the High Authority, provided such alterations are not merely minor boundary adjustments.

Article 10

The agreement entered into by the Mining Companies (II, 3 of the trading regulations) to apply the rules regarding the admission of dealers only in respect of dealers in those areas of the Common Market in which similar non-discriminatory regulations are in force regarding the activities of all dealers in the Common Market is not authorized.

Article 11

1. The agreement entered into by the Mining Companies regarding the requirements for an amendment of the trading regulations (IV of the trading regulations), viz.

- (a) up to and including March 31, 1957, a majority of 75% of the votes of all the member Mining Companies,
- (b) after that date, a majority of 60% of the votes of all the member Mining Companies,

is hereby authorized.

2. Any action to render these conditions more stringent shall be permissible only subject to prior authorization by the High Authority under Article 65, 2 of the Treaty.

PART THREE

GENERAL PROVISIONS

Article 12

All authorizations contained in this decision shall be subject to the following restriction.

Any amendment

- (a) to the Articles of Association of the Geitling Ruhrkohlen-Verkaufsgesellschaft m.b.H. dated December 13, 1955, or to the supplementary agreements of February 6, 1956,
- (b) to a resolution or other decision by the General Meeting of the member Mining Companies, the Supervisory Board, or other representative body of that selling agency,

(c) to the decision on trading regulations, dated February 6, 1956, shall, in accordance with the provisions of the Articles of Association of the Geitling Ruhrkohlen-Verkaufsgesellschaft and of the decision on trading regulations, be made with the co-operation of none but the Mining Companies forming that Selling Agency.

Article 13

1. In accordance with Articles 47 and 65, 3 of the Treaty the High Authority will exercise constant supervision, to the extent it may deem necessary, to determine whether the Mining Companies and the Geitling Ruhrkohlen-Verkaufsgesellschaft are abiding by the terms of the authorizations granted under this decision, and, in particular, whether they are observing the restrictions, conditions and obligations contained therein, and whether the corpus of measures introduced by the parties concerned under these arrangements is essential to the achievement of the purpose defined in Article 65, 2, a of the Treaty, while not contravening the provisions of the Treaty or involving more extensive restrictions than are necessary to their purpose.

2. The High Authority reserves the right to fix the practical details of its method of supervision.

Article 14

This decision shall come into force upon notification to the Mining Companies. It shall cease to have effect on March 31, 1959.

This decision was deliberated and adopted by the High Authority at its session on February 15, 1956.

For the High Authority,

FRANZ ETZEL,
Vice-President.

ANNEX TO DECISION NO. 5/56

Delimitation of Sales Areas

(cf. Article 7 of the Decision)

Sales Area 1 (Hamburg and Netherlands)

Land Schleswig-Holstein
The Hanseatic City of Hamburg
The Hanseatic City of Bremen
in Land Lower Saxony :
 the districts¹ of Aurich, Osnabrück and Stade
 the district² of Oldenburg
 in the district of Lüneburg :
 the circles³ of Harburg and Lüneburg
 in the district of Hanover :
 the counties⁴ of Diepholz and Hoya
the Netherlands

Sales Area 2 (Duisburg, Dortmund, Hanover)

in Land Lower Saxony :
 the districts of Lüneburg and Hanover, exclusive of the portions
 belonging to Sales Area 1
 the district² of Brunswick
 the district of Hildesheim
in Land Hesse :
 the district of Kassel
 the northern portion of the district of Darmstadt (Alsfeld, Giessen,
 Lauterbach)
 the district of Wiesbaden, with the circles of Biedenkopf, Dillkreis,
 Limburg, Oberlahnkreis and Wetzlar
in Land North Rhine-Westphalia
 the districts of Detmold, Münster, Arnsberg and Düsseldorf

¹ *Regierungsbezirke.*

² *Verwaltungsbezirk.*

³ *Kreise.*

⁴ *Grafschaften.*

Sales Area 3 (Cologne, Aachen, Belgium and Luxembourg)

in Land North Rhine-Westphalia :

the districts of Cologne and Aachen (Aix-la-Chapelle)

in Land Rhineland-Palatinate :

the district of Koblenz (exclusive of Birkenfeld and Kreuznach)

the district of Montabaur

the district of Trier (exclusive of the circles of Bernkastel, Saarburg and Trier)

Luxembourg and Belgium

Sales Area 4 (Southern Germany and Eastern France)

Land Bavaria and Land Württemberg

in Land Hesse :

the district of Darmstadt (where not included in Sales Area 2)

the district of Wiesbaden (exclusive of the circles included in Sales Area 2)

in Land Rhineland-Palatinate :

the districts of Rhenish Hesse and the Palatinate

in the district of Koblenz :

the circles of Birkenfeld and Kreuznach

in the district of Trier :

the circles of Bernkastel, Saarburg and Trier

The Saar and Eastern France, viz. the departments of Moselle, Meuse, Haute-Marne, Côte d'Or, Meurthe-et-Moselle, Bas-Rhin, Haut-Rhin, Vosges, Haute-Saône, Doubs and Jura, and the Territoire de Belfort.

Sales Area 5

Northern France, including the territory served by Seine river transport facilities.

Sales Area 6

Remainder of France.

Sales Area 7

Italy.

DECISION No. 6/56, of February 15, 1956, concerning the authorization of joint selling of fuels by the mining companies of the Ruhr coalfield forming the Präsident Ruhrkohlen-Verkaufsgesellschaft m.b.H. (Präsident Ruhr Coal Selling Agency Ltd.)

THE HIGH AUTHORITY,

HAVING regard to Articles 4, 47 and 65 of the Treaty :

HAVING regard to Section 12 of the Convention containing the Transitional Provisions ;

HAVING regard to Decision Nr. 37/53, of July 11, 1953, concerning the date upon which the prohibitions on cartels under Article 65 of the Treaty were to come into force (*Official Gazette of the Community, July 21, 1953, p. 153*) ;¹

HAVING regard to the applications of August 18 and 31, 1953, and to be supplementary applications of December 22, 1955, and February 6, 1956 ;

WHEREAS the following mining companies of the Ruhr coalfield (hereinafter referred to as "the Mining Companies"):

Deutsche Erdöl AG, Hamburg, Steinkohlenbergwerk Graf Bismarck, Gelsenkirchen ;

Steinkohlenbergwerk Friedrich Heinrich AG, Kamp-Lintfort ;

Steinkohlenbergwerk Mansfeld GmbH, Bochum ;

Arenberg Bergbau-GmbH, Essen ;

Altenessener Bergwerks-AG, Essen ;

Essener Steinkohlenbergwerke AG, Essen ;

Gewerkschaft Auguste Victoria, Marl-Hüls ;

Bochumer Bergbau AG, Bochum ;

Carolinenglück Bergbau AG, Bochum ;

Bergbau AG Neue Hoffnung, Oberhausen ;

Heinrich Bergbau AG, Essen-Kupferdreh ;

Klöckner-Bergbau-Victor Ickern AG, Castrop-Rauxel ;

Klöckner-Bergbau Königsborn-Werne AG, Unna ;

Märkische Steinkohlengewerkschaft, Heessen in Westfalen

have, by their agreement of December 13, 1955, supplemented by their agreements of February 6, 1956, covenanted to sell fuel from their collieries jointly in the Common Market from April 1, 1956 to March 31, 1959 ;

WHEREAS these Mining Companies, together with the great majority of the other mining companies of the Ruhr coalfield, have hitherto co-operated within a single Ruhr coal selling agency set up before the introduction of the Common Market, but have decided by the aforementioned agreements to discontinue selling through that agency on March 31, 1956 ;

¹ This reference applies to the German, French, Italian and Dutch editions of the Official Gazette of the European Coal and Steel Community, published in Luxembourg.

WHEREAS the total output of hard coal and the total production of hard-coal coke for the Ruhr coalfield, apart from those of certain small collieries, are as follows:

Coal year	Hard coal		Hard-coal coke	
	in millions of metric tons	in % of the Common Market	in millions of metric tons	in % of the Common Market
1953-54	116·6	49·1	31·8	53·0
1954-55	119·7	49·4	30·6	49·7
1955-56	121·5	49·0	35·2	50·1

WHEREAS of this total tonnage part is consumed by the Ruhr enterprises themselves (collieries' own consumption, miners' concessionary coal, input of mine-owned coking-plants and briquetting-works), part exported by them to third countries, and part sold by them independently to consumers in the Common Market (work's own consumption¹, special delivery contracts, local sales in North Rhine-Westphalia²), so that the remainder sold jointly in the Common Market totals:

Coal year	Hard coal		Hard-coal coke	
	in millions of metric tons		in millions of metric tons	
1953-54	47·129		14·312	
1954-55	50·029		15·262	
1955-56	44·966		14·593	

WHEREAS of this tonnage those Mining Companies which under the agreement of December 13, 1955, joined to form the Präsident Ruhr Coal Selling Agency (hereinafter referred to as "the Selling Agency") will sell approximately one-third, *i.e.*, taking the figures for the coal year 1955-56 as a basis, approximately the following tonnages:

	Hard coal	Hard-coal coke
in millions of metric tons	14·867	4·954
in % of Ruhr production	12·2%	14·1%
in % of Common Market production ...	6·0%	7·1%

WHEREAS such joint selling means better distribution of fuel, since in view of the multiplicity of types and grades of fuel, and of the varying intensity of demand, any attempt by individual mining companies to sell fuel independently would

- (a) be uneconomic both for the enterprises themselves and for the consumers and dealers,

¹ "Werksebstverbrauch" = deliveries to works with which the producing collieries are financially linked.

² "Landabsatz" = direct sales to local consumers.

- (b) lead, in the event of a decline in demand, to marked disparities in employment between the various mining companies of the Ruhr coalfield, and thus to social stresses among the workers there, and
- (c) result, in the event of the demand for Ruhr coal exceeding available supplies (a situation not necessarily justifying the declaration of a serious shortage in the Community), in inequalities in supplies to consumers and dealers ;

WHEREAS the permission granted under Section 2, 2 and 6, 2 of the Articles of Association also to sell fuels

- (a) not produced by the collieries, plants, etc. of the member Mining Companies, or
- (b) produced by such collieries, plants, etc. (mining concessions, parts of such concessions, pits, coking-plants and briquetting-works) as have been acquired by the member Mining Companies subsequent to the conclusion of the agreement, whether as their own property, for usufruct, on lease, or in any other manner,

might cause the Selling Agency's influence in the market to be extended in a measure incompatible with Article 65, 2 of the Treaty ;

WHEREAS this additional sale of fuels, provided it is limited to 500,000 metric tons per annum, does not involve such an extension of influence, and whereas the High Authority reserves the right, as regards any increase in these additional sales over and above the tonnage mentioned, to proceed to a concrete examination of the situation, in conformity with the provisions of Article 65, 2 of the Treaty ;

WHEREAS, therefore, the permission granted under Sections 2, 2 and 6, 2 of the Articles of Association can only be approved in respect of a total of 500,000 metric tons per annum, and special authorization must be requested in respect of any additional tonnage ;

WHEREAS the other mining companies of the Ruhr coalfield, apart from some extracting very small quantities, have likewise joined to form two other selling agencies with very much the same aggregate output, to wit, the Geitling Ruhrkohlen-Verkaufsgesellschaft and the Mausegatt Ruhrkohlen-Verkaufsgesellschaft ;

WHEREAS all the mining companies belonging to these three selling agencies have at the same time set up certain joint organizations ;

WHEREAS no authorization under Article 65, 2 of the Treaty is required for some of these organizations, which perform no duties of a nature likely to restrict competition in the Common Market, viz.

- (a) the Ruhrkohlen-Exportgesellschaft m.b.H., responsible for the sale of fuel to areas outside the Common Market,
- (b) the Ruhrkohlen-Beratungsgesellschaft m.b.H., responsible mainly for inquiry into and encouragement of the technical and economic utilization of coal, for co-operation in matters of grading, for collective publicity for Ruhr coal, for market research and observation, and for transport problems.

- (c) the Ruhrkohle-Treuhandgesellschaft m.b.H., responsible as trustee, for all accounting, financial and clearing matters, for the administration of assets, and for the punched-card control system ;

WHEREAS various other joint measures regarding the setting-up of the Joint Office and the Standards Committee, the decisions of the Standards Committee, and a number of financial arrangements, are authorized by the High Authority in its Decision No. 8/56, of February 15, 1956 (*Official Gazette of the Community*, p. 82), in conformity with Articles 65, 2 and 53, *a* of the Treaty, in so far as such measures are necessary to the aim and object of each of the three Ruhr coal selling agencies, viz. the substantial improvement of fuel distribution, with due regard for the conditions prevailing in the coalmining industry ;

WHEREAS over and above the limits therein defined, all agreements, decisions and practices agreed and adopted among the mining companies of the Ruhr coalfield or among the three selling agencies with the aim of restricting competition are forbidden under Article 65, 1 of the Treaty, and whereas such agreements, decisions and practices cannot be authorized under Article 65, 2 of the Treaty, inasmuch as this would make it possible for the enterprises to determine prices and/or to control the production and marketing of a substantial proportion of the Community's coal ;

WHEREAS this authorization is intended, accordingly, to safeguard, by appropriate limitations and conditions, the independence of the three Ruhr coal selling agencies, and more particularly the possibility of developing an autonomous production and marketing policy within each agency ;

WHEREAS it would be incompatible with these requirements

- (a) for any director responsible for the management of one selling agency to be at one and the same time a director of another, the chairman of the Joint Office, a director of the Ruhrkohlen-Exportgesellschaft, or a director of the Ruhrkohle-Treuhandgesellschaft ;
- (b) for any agent or representative of one selling agency to act at one and the same time as agent or representative of another ;
- (c) for a selling agency to make funds accumulated by it available, in the form either of a loan or a guarantee, to another selling agency, or to a mining company belonging to another agency ;
- (d) for any amendment to the Articles of Association, or to decisions, by the General Meeting, the Supervisory Board or any other body constituted by the Selling Agency, to be contingent on the co-operation of enterprises not belonging to that Selling Agency ;

WHEREAS the Mining Companies forming the Präsident Ruhrkohlen-Verkaufsgesellschaft, inasmuch as they are entitled under the High Authority's Decision No. 8/56, of February 15, 1956, to co-operate with the Joint Office and the Standards Committee, are at the same time required to make use of the powers conferred upon them by the Articles of the Selling Agency, the Joint Office, and the Standard Committee, and by the decisions of the Standards Committee, in order to achieve the object of such co-operation, viz. the off-setting of types and grades, the balancing of employment, and the elimination of disparities in the event of tightness in the supply situation ;

WHEREAS a joint-selling system affords the Mining Companies a position of considerable influence in the market, which in turn makes it possible to introduce into a marketing system practices *vis-à-vis* consumers and/or dealers which contravene the provisions of Article 4, *b* and *d* of the Treaty, and, in particular, the prohibition of discrimination and allocation of markets ;

WHEREAS, accordingly, the Mining Companies should, without prejudice to the special provisions of the present decision on the agreements of February 6, 1956, concerning trading regulations, be obliged by appropriate conditions to comply with the prohibitions contained in Article 4, *b* and *d* of the Treaty ;

WHEREAS it would, in particular, be an infringement of these provisions if the Mining Companies, or the Selling Agency, were to prevent their customers (wholesalers or consumers), either directly or indirectly (*e.g.* by making difficulties with regard to the provision of shipping space), contrary to the delivery terms, from taking delivery of their fuel ex-colliery, ex-coal port f.o.b. Duisburg-Ruhrort and transporting it either by their own means or through a firm commissioned by them ;

WHEREAS the Mining Companies, or the Selling Agency, would likewise be contravening these provisions if, where their delivery terms allow rebates on sales to direct-buying wholesalers, they were to grant such rebates only provided the direct-buying wholesalers then sold direct to particular consumers or retailers, and were to refuse similar rebates if the wholesalers sold the fuel to other wholesalers for resale to consumers or retailers ;

WHEREAS the Mining Companies have, by their agreements of February 6, 1956, laid down the conditions on which the Präsident Ruhrkohlen-Verkaufsgesellschaft, formed by these enterprises for the joint selling of their fuel, may

(a) supply consumers and dealers direct,

(b) decline to supply consumers and dealers direct ;

WHEREAS these agreements specify, in particular, the following criteria for distinguishing consumers and dealers supplied direct from consumers and dealers excluded from direct supplies :

(a) for consumers :

a minimum consumption of 30,000 metric tons per annum ;

(b) for dealers :

a minimum turnover of 12,500 metric tons per annum obtained from the Selling Agency and sold within a particular sales area ;¹

a minimum turnover of 25,000 metric tons per annum obtained from the Ruhr coal selling agencies and sold within the same sales area ;

a minimum turnover of 40,000 metric tons per annum obtained from Community coalfields and sold within the same sales area ;

a minimum turnover of 75,000 metric tons per annum obtained from Community coalfields and sold within the Common Market ;

WHEREAS agreements of this nature amount to an allocation of customers and markets within the meaning of Articles 4, *d* and 65, 1 of the Treaty ;

¹ The delimitation of the sales areas is shown in the annex to this decision.

WHEREAS agreements of this nature may, notwithstanding, be authorized in accordance with Article 65, 2 of the Treaty, in so far as the system adopted

- (a) contributes to a substantial improvement in the distribution of fuel,
- (b) is not more restrictive than is necessary for the purpose, and does not give either the producer or the dealer the power to control or limit the selling of a substantial proportion of the fuel produced,
- (c) does not contravene the prohibition of discrimination (Article 4, *b* of the Treaty);

WHEREAS the agreements between the Mining Companies not to supply consumers with an annual consumption of less than 30,000 metric tons are compatible with these provisions, inasmuch as this limitation

- (a) is based on objective and non-discriminatory criteria,
- (b) does in fact conduce to a substantial improvement in the distribution of fuel, since the producers thus have to confine their direct sales to certain large-scale buyers;

WHEREAS the Ruhr Selling Agency existing hitherto used in some exceptional cases to deal through certain wholesalers even when supplying consumers whose annual consumption was above the minimum tonnage laid down for direct supply;

WHEREAS the agreement among the Mining Companies to retain this exception over a further two years does not constitute discrimination, since under this transitional regulation the supplying of such consumers is permitted, without discrimination, to all coal wholesalers in the Community;

WHEREAS the High Authority further reserves the right to decide at a later date whether and on what conditions the Mining Companies will be within their rights in declining to supply through dealers such consumers as can in fact obtain their fuel direct from the producers but wish notwithstanding to buy them through dealers;

WHEREAS the criteria laid down in the trading regulations regarding the direct supplying of dealers are, with few exceptions, also compatible with the provisions of Article 65, 2 of the Treaty cited above, since

- (a) they help to delimit, in accordance with the particular characteristics of the coal trade, the activities of the different types of wholesaler (direct-buying wholesalers, other wholesalers), and consequently contribute towards a substantial improvement in the distribution of fuel;
- (b) in view of the size of the sales areas, the probable number of wholesalers operating there, and other features of the different areas (*e.g.* ratio of sales of fuel from a selling agency to sales of fuel from other coalfields), and in view of the revision clause (amendment of the conditions of admission should more than 10 per cent of the dealers previously admitted be ruled out), the system adopted for delimiting the sales areas neither has discriminatory effects nor puts a limited number of dealers in the sales areas in a position to restrict competition in a manner incompatible with the provisions of Article 65, 2 of the Treaty;

WHEREAS the further condition prescribed for entitlement to direct buying,

namely, that the dealer shall have marketed within his sales area a minimum of 25,000 metric tons per annum of fuel obtained from the Ruhr coal selling agencies,

does, however, mean that the dealer, in order to gain the advantage of direct buying, will choose to obtain fuel up to the specified quantity of 25,000 metric tons from the other two Ruhr coal selling agencies, and thus will defer buying from producers in other coalfields ;

WHEREAS this criterion

- (a) gives rise to discrimination, more particularly *vis-à-vis* producers in other coalfields of the Community,
- (b) is more restrictive than is necessary for the purpose of delimitation, which is simply to establish a norm for a given volume of wholesale trading ;

;

WHEREAS this section of the agreements on trading regulations is thus incompatible with the prohibition contained in 4, b of the Treaty and with the provisions of Article 65, 2 of the Treaty, and accordingly cannot be authorized ;

WHEREAS in regard to the entitlement of wholesalers to direct supplies the Ruhr coal selling organization existing hitherto used to follow a system which did not lay down equal conditions for all dealers within the Common Market ;

WHEREAS, accordingly the regulation now adopted by the Mining Companies must, in order to obviate unlawful discriminations between dealers in the Common Market, be so implemented as to ensure that all dealers in the Common Market have the same chance of being admitted as direct-buying wholesalers, on the basis of their purchases over the preceding coal year ;

WHEREAS the new trading regulations contain a special transitional regulation to the effect that, irrespective of the new criteria laid down for the future, those dealers shall be admitted for the time being as direct-buying wholesalers who either

- (a) were already being treated as direct-buying wholesalers during the coal year 1955-56, or
- (b) can prove that, during the coal year 1955-56, they complied with the conditions then entitling to treatment as direct-buying wholesalers,

until such time as it is possible to ensure adequate supplies of fuel from the Selling Agency over a whole coal year ;

WHEREAS there is no objection to such a stipulation inasmuch as it facilitates the transition from the old regulations to the new ;

WHEREAS this transitional regulation must, nevertheless, be limited in its application to the coal year 1956-57, since otherwise a distinction not justified by the facts of the case would grow up between

- (a) the dealers admitted under this transitional regulation (mainly dealers established in the German Federal Republic, who would not be required, in particular, to achieve the highest of the reference tonnages specified, namely, a turnover of 75,000 metric tons per annum within the Community), and
- (b) the dealers admitted only under the new regulations (mainly dealers established outside the German Federal Republic, who would have to prove that they had in fact achieved this figure of 75,000 metric tons per annum);

WHEREAS the Mining Companies have further covenanted to implement the trading regulations only in respect of dealers in those territories of the Common Market in which similar non-discriminatory regulations exist in respect of the activities of all dealers in the Common Market;

WHEREAS this categorical restriction amounts in itself to a discrimination, since it means that dealers in the Common Market territories concerned will be treated differently from those in the other territories;

WHEREAS there is no justification in fact for this unequal treatment, since

- (a) it is the duty of the High Authority to take action against existing discriminations within the Common Market,
- (b) a producer may not counter a discrimination practised by others against particular dealers by similarly discriminating against these dealers;

WHEREAS this section of the agreements on trading regulations is, therefore, inconsistent with the prohibition contained in Article 4, *b* of the Treaty and with the provisions of Article 65, 2 of the Treaty, and accordingly cannot be authorized;

WHEREAS the trading regulations adopted by the Mining Companies in respect of joint selling through the Präsident Ruhrkohlen-Verkaufsgesellschaft are identical with the trading regulations laid down for the other two Ruhr coal selling agencies;

WHEREAS the Mining Companies have, notwithstanding, agreed that any amendment of their trading regulations at any time after April 1, 1957, will require a majority of 60% of the votes of all member Mining Companies, a necessary prerequisite being that it should be possible to amend the trading regulations of the Präsident Ruhrkohlen-Verkaufsgesellschaft where the Mining Companies consider, in the light of one year's experience, that such amendment is desirable, independent of developments in the other selling agencies, and independent of any co-operation on the part of those mining companies which do not belong to the Präsident Ruhrkohlen-Verkaufsgesellschaft;

WHEREAS the agreements entered into by the Mining Companies on December 13, 1955, and February 6, 1956, regarding joint selling through the Präsident Ruhrkohlen-Verkaufsgesellschaft and the introduction of trading regulations are, accordingly, necessary for any substantial improvement of the distribution of fuel;

WHEREAS these agreements, in conjunction with the restrictions and conditions contained in this decision, do not go further than is necessary for their purpose, and whereas in view of the degree of this Selling Agency's influence upon the market, they do not give the Mining Companies the power to determine prices or to control or restrict production or distribution in respect of a substantial proportion of the fuel in the Common Market ;

WHEREAS the High Authority will exercise constant supervision to ensure that the parties concerned are abiding by the terms of the authorization granted, and are, in particular, observing the restrictions and conditions therein contained, and that the corpus of measures introduced by them neither restricts competition more than is necessary for the purpose nor contravenes any other provisions of the Treaty ;

WHEREAS, accordingly, the corpus of agreements is, in conjunction with the necessary restriction and conditions, compatible with the provisions of Article 4, *b* and *d* and of Article 65, 2 of the Treaty,

DECIDES :

PART ONE

JOINT SELLING

Article 1

The agreements entered into by the following Mining Companies :

Deutsche Erdöl AG, Hamburg, Steinkohlenbergwerk Graf Bismarck, Gelsenkirchen ;
Steinkohlenbergwerk Friedrich Heinrich AG, Kamp-Lintfort ;
Steinkohlenbergwerk Mansfeld GmbH, Bochum ;
Arenberg Bergbau-GmbH, Essen ;
Altenessener Bergwerks-AG, Essen ;
Essener Steinkohlenbergwerke AG, Essen ;
Gewerkschaft Auguste Victoria, Marl-Hüls ;
Bochumer Bergbau AG, Bochum ;
Carolinenglück Bergbau AG, Bochum ;
Bergbau AG Neue Hoffnung, Oberhausen ;
Heinrich Bergbau AG, Essen-Kupferdreh ;
Klöckner-Bergbau-Victor Ickern AG, Castrop-Rauxel ;
Klöckner-Bergbau Königsborn-Werne AG, Unna ;
Märkische Steinkohlengewerkschaft, Heessen in Westfalen ;

concerning joint selling of fuel from their collieries within the Common Market,

as contained under heads 1 and 2 *b* of the Articles of Association of the Präsident Ruhrkohlen-Verkaufsgesellschaft m.b.H., and in Annex 4 to the agreements of December 13, 1955 (registered under No. 1268/1955 at the offices of Ewald Leveloh, notary public, Essen) and supplemented by the additional agreements of February 6, 1956 (registered under No. 154/1956 at the offices of Ewald Leveloh, notary public, Essen)

are hereby authorized, subject to any dismissal, restriction or condition contained in the Articles hereafter enumerated.

Article 2

The joint selling of fuel not produced by the collieries, plants, etc. of the member Mining Companies (Section 2, 2, of the Articles of Association), or produced by such collieries, plants, etc. as shall have been acquired by the member Mining Companies subsequent to the conclusion of the agreement of December 13, 1955, whether as their own property, for usufruct, on lease, or in any other manner (Section 6, 3 of the Articles of Association), is authorized only in respect of a total of 500,000 metric tons per annum. Any joint selling of tonnages over and above this figure shall require special authorization by the High Authority.

Article 3

Authorization is granted subject to the following conditions:

1. Members of the Management of the Selling Agency must not at one and the same time hold any post as

- (a) member of the Management of the Geitling Ruhrkohlen-Verkaufsgesellschaft ;
- (b) member of the Management of the Mausegatt Ruhrkohlen-Verkaufsgesellschaft ;
- (c) chairman of the Joint Office set up by the three Ruhr coal selling agencies ;
- (d) member of the Management of the Ruhrkohlen-Exportgesellschaft m.b.H ;
- (e) member of the Management of the Ruhrkohle-Treuhandgesellschaft m.b.H.

2. Agents and representatives of the Selling Agency must not at one and the same time act as agents or representatives of the Geitling Ruhrkohlen-Verkaufsgesellschaft, or of the Mausegatt Ruhrkohlen-Verkaufsgesellschaft.

3. The Selling Agency must not out of its own funds, either directly or through the Ruhrkohle-Treuhandgesellschaft m.b.H., advance loans or furnish guarantees to any other Ruhr coal selling agency, or to any mining company belonging to such a selling agency.

4. The Selling Agency shall establish and implement its general conditions governing the marketing of its products, and, in particular, the provisions concerning the direct supplying of consumers and direct supplying of dealers, as well as any further agreements limiting the activities of a dealer to a specific geographical area, in such a manner that the said conditions and agreements shall not contravene the prohibitions contained in Article 4, *b* and *d* of the Treaty. This provision shall in no way affect the restrictions and conditions contained in Part Two of this decision, regarding agreements entered into by the enterprises concerned in respect of trading regulations.

5. Where the delivery terms of the Mining Companies or of the Selling Agency allow delivery ex-colliery or ex-coal port, neither the Mining Companies nor the Selling Agency may prevent the buyer from taking delivery of his fuel ex-colliery or ex-coal port and transporting it either by his own means or through a firm commissioned by him.

6. Where the delivery terms of the Mining Companies or of the Selling Agency allow delivery f.o.b. Duisburg-Ruhrort, neither the Mining Companies nor the Selling Agency may prevent the buyer from taking delivery of his fuel f.o.b. Duisburg-Ruhrort and transporting it either by his own means or through a firm commissioned by him.

7. Should the buyer wish to transport his fuel either by his own means or through a firm commissioned by him, neither the Mining Companies nor the Selling Agency may discriminate against him in relation to other buyers regarding transport arrangements, and more particularly regarding the provisions of shipping space.

8. Where the Mining Companies or the Selling Agency grant certain rebates to direct-buying wholesalers on purchases for resale to consumers and retailers, such wholesalers shall be granted the same rebates even if they supply the fuel to other wholesalers for resale by them to these consumers and retailers.

9. The Mining Companies and the Directors of the Selling Agency shall make every effort within the powers vested in them under

(a) the Articles of Association of the Präsident Ruhrkohlen-Verkaufsgesellschaft m.b.H. dated December 13, 1955,

(b) the agreement instituting a Standards Committee, dated December 13, 1955,

(c) the decisions taken by the Standards Committee,

(d) the agreement instituting a Joint Office, dated December 13, 1955.

to avoid an inequitable distribution among the workers of the reduced number of jobs which might result from any decline in demand, and to avoid inequalities in deliveries in the event of tightness in the supply situation.

10. The Selling Agency shall communicate to the High Authority without delay

(a) all decisions by the General Meeting and by the Supervisory Board ;

(b) all agreements by which the Ruhrkohle-Treuhandgesellschaft m.b.H. is authorized, as trustee, to handle all accounting, financial and clearing matters, the administration of assets, and the punched-card control system ;

(c) all amendments and supplements to the decisions and agreements specified under (a) and (b) above.

PART TWO

TRADING REGULATIONS

Article 4

The agreements entered into by the Mining Companies listed in Article 1 above concerning the introduction of trading regulations with effect from April 1, 1956,

as embodied in the agreements of February 6, 1956 (registered under No. 154/1956, at the offices of Ewald Leveloh, notary public, Essen),

are hereby authorized, subject to any dismissal, restriction or condition contained in the Articles hereafter enumerated.

Article 5

1. The agreement entered into by the Mining Companies to make the wholesale trade responsible for all transactions with industrial consumers whose consumption over the past coal year has not exceeded 30,000 metric tons of hard coal, hard-coal coke and hard-coal briquettes (I, 1 and 3 of the trading regulations) is hereby authorized.

2. The agreement entered into by the Mining Companies to make the coal wholesale trade responsible also, up to and including March 31, 1958, for transactions with those industrial consumers whose consumption over the coal year 1955-56 has in fact been in excess of 30,000 metric tons of the fuels mentioned in paragraph 1 above, but who, by way of exception have up to now been supplied through the coal wholesale trade (I, 2 of the trading regulations) is hereby likewise authorized.

3. The High Authority reserves the right to decide at a later date whether industrial consumers with a consumption in excess of 30,000 metric tons of the fuels mentioned in paragraph 1 above can be refused facilities for obtaining supplies through the trade if they desire to buy in this way.

Article 6

The agreement entered into by the Mining Companies to make the coal wholesalers responsible for supplying the coal retail trade (I, 4 of the trading regulations) is hereby authorized.

Article 7

The agreement entered into by the Mining Companies regarding the admission of dealers as coal wholesalers (II, 1 of the trading regulations and annex) is hereby authorized in so far as the direct supplying of any coal wholesaler (whereby he becomes a "direct-buying wholesaler") is made conditional upon the following :

1. Such wholesaler shall in the previous coal year have sold in the Common Market not less than 75,000 metric tons of hard coal, hard-coal coke, hard-coal briquettes, brown-coal briquettes, low-temperature coke of lignite and/or bituminous coal from Community coalfields, and/or of gas coke.

2. Such wholesaler shall in the previous coal year have sold in the sales area to which he is admitted¹ not less than 40,000 metric tons of the fuels mentioned in paragraph 1 above from Community coalfields, and/or of gas coke.

3. Such wholesaler shall in the previous coal year have sold in the sales area concerned not less than 12,500 metric tons of fuels obtained from the Selling Agency.

4. Such wholesaler shall meet the requirements usually demanded of a wholesaler (e.g. solvency, domicile in the sales area, stock-keeping facilities, acquaintance with the market and with the commodities concerned, a large clientèle, a considerable range of types and grades marketed). In respect

¹ The delimitation of the sales areas is shown in the annex to this decision. Cf. also Article 9, 5.

of stock-keeping, this shall apply only in so far as such stock-keeping can be reasonably expected, having regard to the transport regulations obtaining (particularly the freight rates), and to the nature of the trading area supplied by the dealer concerned.

Article 8

The agreement entered into by the Mining Companies regarding the admission of dealers as coal wholesalers (II, 1 of the trading regulations and annex) is not authorized where the direct supplying of any coal wholesaler is made conditional upon the further provision that such wholesaler shall in the previous coal year have sold in the sales area to which he is admitted not less than 25,000 metric tons of fuels obtained from the Ruhr coal selling agencies.

Article 9

In so far as this decision authorizes the agreements entered into by the Mining Companies regarding the admission of dealers as coal wholesalers, such authorization shall be contingent on the following restrictions and conditions:

1. The rules regarding the admission of dealers as direct-buying coal wholesalers shall be applied in such a manner that the Selling Agency shall at the beginning of each coal year give to all dealers within the Common Market, without discrimination, the opportunity of producing evidence of entitlement to direct buying, on the basis of the tonnages of fuels from the Selling Agency and fuels from Community coalfields bought by them, directly or indirectly, over the previous coal year.

2. In respect of the first admission, for the coal year 1956-57, this regulation shall be implemented as follows:

(a) In so far as admission as a wholesaler depends on the dealer's having over the previous coal year sold not less than 12,500 metric tons of fuel obtained from a selling agency (cf. Article 7, 3 above), the dealer shall be deemed to fulfil the requirements if he can show

(i) that he obtained this tonnage during the coal year 1955-56 directly from one or more of the six former Ruhr coal selling agencies, or

(ii) that he obtained this tonnage during the coal year 1955-56 indirectly, *i.e.* from a wholesale firm or organization which in its turn obtained that tonnage directly or indirectly from one or more of the six former Ruhr coal selling agencies.

(b) If, in accordance with these principles, the tonnage of Ruhr coal obtained by any wholesaler over the coal year 1955-56 is not less than 12,500 metric tons, that wholesaler shall then be entitled to claim admission by any selling agency he may select.

(c) If the tonnage of Ruhr coal obtained by any dealer over the coal year 1955-56 is greater than 12,500 metric tons, each additional tonnage shall entitle to admission by another selling agency, provided that additional tonnage is not less than 12,500 metric tons in each case.

3. Furthermore, under the agreement entered into by the Mining Companies (II, 2 of the trading regulations), admission as direct-buying wholesalers shall be extended, during a transition period up to the end of the coal year 1956-57, to those wholesalers who either

- (a) were already supplied as direct-buying wholesalers during the coal year 1955-56, or
- (b) can show that during the coal year 1955-56, they fulfilled the conditions then obtaining for admission as direct-buying wholesalers.

The agreement entered into by the Mining Companies (II, 2 of the trading regulations) to retain this transitional regulation until such time as it has been possible to ensure an adequate supply of fuel through the Selling Agency over a whole coal year is not authorized.

4. Should it emerge, upon the expiry of the transition period specified in paragraph 3 above, that, in the implementation of the rules authorized under Article 7, above, more than 10 per cent. of the dealers trading as wholesalers within a given sales area during the coal year 1955-56 no longer fulfil the conditions laid down for admission as direct-buying wholesalers, the Selling Agency shall, in accordance with the agreements entered into on February 6, 1956, regarding trading regulations (II, 2, fourth paragraph), so amend its conditions as to enable not less than 90 per cent. of the dealers trading as wholesalers in the sales area concerned during the coal year 1955-56 to be admitted.

5. Any alteration of the sales areas as given in the annex to this decision shall require the authorization of the High Authority, provided such alterations are not merely minor boundary adjustments.

Article 10

The agreement entered into by the Mining Companies (II, 3 of the trading regulations) to apply the rules regarding the admission of dealers only in respect of dealers in those areas of the Common Market in which similar non-discriminatory regulations are in force regarding the activities of all dealers in the Common Market is not authorized.

Article 11

1. The agreement entered into by the Mining Companies regarding the requirements for an amendment of the trading regulations (IV of the trading regulations), viz.

- (a) up to and including March 31, 1957, a majority of 75 per cent. of the votes of all the member Mining Companies,
- (b) after that date, a majority of 60 per cent. of the votes of all the member Mining Companies,

is hereby authorized.

2. Any action to render these conditions more stringent shall be permissible only subject to prior authorization by the High Authority under Article 65, 2 of the Treaty.

PART THREE

GENERAL PROVISIONS

Article 12

All authorizations contained in this decision shall be subject to the following restriction.

Any amendment

- (a) to the Articles of Association of the Präsident Ruhrkohlen-Verkaufsgesellschaft m.b.H. dated December 13, 1955, or to the supplementary agreements of February 6, 1956,
- (b) to a resolution or other decision by the General Meeting of the member Mining Companies, the Supervisory Board, or other representative body of that selling agency,
- (c) to the decision on trading regulations, dated February 6, 1956,

shall, in accordance with the provisions of the Articles of Association of the Präsident Ruhrkohlen-Verkaufsgesellschaft and of the decision on trading regulations, be made with the co-operation of none but the Mining Companies forming that Selling Agency.

Article 13

1. In accordance with Articles 47 and 65, 3 of the Treaty the High Authority will exercise constant supervision, to the extent it may deem necessary, to determine whether the Mining Companies and the Präsident Ruhrkohlen-Verkaufsgesellschaft are abiding by the terms of the authorizations granted under this decision, and, in particular, whether they are observing the restrictions, conditions and obligations contained therein, and whether the corpus of measures introduced by the parties concerned under these arrangements is essential to the achievement of the purpose defined in Article 65, 2, *a* of the Treaty, while not contravening the provisions of the Treaty or involving more extensive restrictions than are necessary to their purpose.

2. The High Authority reserves the right to fix the practical details of its method of supervision.

Article 14

This decision shall come into force upon notification to the Mining Companies. It shall cease to have effect on March 31, 1959.

This decision was deliberated and adopted by the High Authority at its session on February 15, 1956.

For the High Authority,

FRANZ ETZEL,

Vice-President.

ANNEX TO DECISION No. 6/56

Delimitation of Sales Areas

(cf. Article 7 of the Decision)

Sales Area 1 (Hamburg and Netherlands)

Land Schleswig-Holstein
The Hanseatic City of Hamburg
The Hanseatic City of Bremen

in Land Lower Saxony :

the districts¹ of Aurich, Osnabrück and Stade
the district² of Oldenburg
in the district of Lüneburg :
the circles³ of Harburg and Lüneburg
in the district of Hanover :
the counties⁴ of Diepholz and Hoya

The Netherlands

Sales Area 2 (Duisburg, Dortmund, Hanover)

in Land Lower Saxony :

the districts of Lüneburg and Hanover, exclusive of the portions
belonging to Sales Area 1
the district² of Brunswick
the district of Hildesheim

in Land Hesse :

the district of Kassel
the northern portion of the district of Darmstadt (Alsfeld, Giessen,
Lauterbach)
the district of Wiesbaden, with the circles of Biedenkopf, Dillkreis,
Limburg, Oberlahnkreis and Wetzlar

in Land North Rhine-Westphalia

the districts of Detmold, Münster, Arnsberg and Düsseldorf

Sales Area 3 (Cologne, Aachen, Belgium and Luxembourg)

in Land North Rhine-Westphalia :

the districts of Cologne and Aachen (Aix-la-Chapelle)

in Land Rhineland-Palatinate :

the district of Koblenz (exclusive of Birkenfeld and Kreuznach)
the district of Montabaur
the district of Trier (exclusive of the circles of Bernkastel, Saarburg
and Trier)

Luxembourg and Belgium

¹ *Regierungsbezirke.*

² *Verwaltungsbezirk.*

³ *Kreise.*

⁴ *Grafschaften.*

Sales Area 4 (Southern Germany and Eastern France)

Land Bavaria and Land Württemberg

in Land Hesse :

the district of Darmstadt (where not included in Sales Area 2)
the district of Wiesbaden (exclusive of the circles included in Sales Area 2)

in Land Rhineland-Palatinate :

the districts of Rhenish Hesse and the Palatinate

in the district of Koblenz :

the circles of Birkenfeld and Kreuznach

in the district of Trier :

the circles of Bernkastel, Saarburg and Trier

The Saar and Eastern France, viz. the departments of Moselle, Meuse, Haute-Marne, Côte d'Or, Meurthe-et-Moselle, Bas-Rhin, Haut Rhin, Vosges, Haute-Saône, Doubs and Jura, and the Territoire de Belfort.

Sales Area 5

Northern France, including the territory served by Seine river transport facilities.

Sales Area 6

Remainder of France

Sales Area 7

Italy

DECISION No. 7/56, of February 15, 1956, concerning the authorization of joint selling of fuels by the mining companies of the Ruhr coalfield forming the Mausegatt Ruhrkohlen-Verkaufsgesellschaft m.b.H. (Mausegatt Ruhr Coal Selling Agency Ltd.)

THE HIGH AUTHORITY,

HAVING regard to Articles 4, 47 and 65 of the Treaty ;

HAVING regard to Section 12 of the Convention containing the Transitional Provisions ;

HAVING regard to Decision No. 37/53, of July 11, 1953, concerning the date upon which the prohibitions on cartels under Article 65 of the Treaty were to come into force (*Official Gazette of the Community, July 21, 1953, p. 153*) ;¹

HAVING regard to the applications of August 18 and 31, 1953, and to the supplementary applications of December 22, 1955, and February 6, 1956 ;

¹ This reference applies to the German, French, Italian and Dutch editions of the Official Gazette of the European Coal and Steel Community, published in Luxembourg.

WHEREAS the following mining companies of the Ruhr coalfield (hereinafter referred to as "the Mining Companies") :

Gewerkschaft der Steinkohlenzeche Petrus Segen, Niederstüter

Concordia Bergbau AG, Oberhausen

Bergwerksgesellschaft Dahlbusch, Gelsenkirchen

Hamborner Bergbau AG, Duisburg-Hamborn

Friedrich Thyssen Bergbau AG, Duisburg-Hamborn

Bergwerksgesellschaft Hibernia AG, Herne

Niederrheinische Bergwerks AG, Neukirchen

Langenbrahm Steinkohlenbergbau AG, Essen

Bergbau AG Constantin der Grosse, Bochum

Diergardt-Mevissen Bergbau AG, Rheinhausen

Emscher-Lippe Bergbau AG, Datteln

Bergbau AG Ewald-König Ludwig, Herten

Dortmunder Bergbau AG, Dortmund

Hansa Bergbau AG, Dortmund

Erin Bergbau AG, Castrop-Rauxel

Gewerkschaft des Steinkohlenbergwerks Haus Aden, Herten

Gewerkschaft des Steinkohlenbergwerks Victoria Mathias, Essen

Steinkohlenbergwerk Westfalen AG, Ahlen

have, by their agreements of December 13, 1955, supplemented by their agreements of February 6, 1956, covenanted to sell fuel from their collieries jointly in the Common Market from April 1, 1956 to March 31, 1959 ;

WHEREAS these Mining Companies, together with the great majority of the other mining companies of the Ruhr coalfield, have hitherto co-operated within a single Ruhr coal selling agency set up before the introduction of the Common Market, but have decided by the aforementioned agreements to discontinue selling through that agency on March 31, 1956 ;

WHEREAS the total output of hard coal and the total production of hard-coal coke for the Ruhr coalfield, apart from those of certain small collieries, are as follows :

Coal year	Hard coal		Hard-coal coke	
	in millions of metric tons	in % of the Common Market	in millions of metric tons	in % of the Common Market
1953-54	116·6	49·1	31·8	53·0
1954-55	119·7	49·4	30·6	49·7
1955-56	121·5	49·0	35·2	50·1

WHEREAS of this total tonnage part is consumed by the Ruhr enterprises themselves (collieries' own consumption, miners' concessionary coal, input of mine-owned coking-plants and briquetting-works), part exported by them to

third countries, and part sold by them independently to consumers in the Common Market (works' own consumption¹, special delivery contracts, local sales in North Rhine-Westphalia²), so that the remainder sold jointly in the Common Market totals:

Coal year	Hard coal	Hard-coal coke
	in millions of metric tons	in millions of metric tons
1953-54	47·129	14·312
1954-55	50·029	15·262
1955-56	44·966	14·593

WHEREAS of this tonnage those Mining Companies which under the agreement of December 13, 1955, joined to form the Mausegatt Ruhr Coal Selling Agency (hereinafter referred to as "the Selling Agency") will sell approximately one-third, *i.e.*, taking the figures for the coal year 1955-56 as a basis, approximately the following tonnages:

	Hard coal	Hard-coal coke
in millions of metric tons	14·417	5·801
in % of Ruhr production	11·9%	16·5%
in % of Common Market production ...	5·8%	8·3%

WHEREAS such joint selling means better distribution of fuel, since in view of the multiplicity of types and grades of fuel, and of the varying intensity of demand, any attempt by individual mining companies to sell fuel independently would

- (a) be uneconomic both for the enterprises themselves and for the consumers and dealers,
- (b) lead, in the event of a decline in demand, to marked disparities in employment between the various mining companies of the Ruhr coalfield, and thus to social stresses among the workers there, and
- (c) result, in the event of the demand for Ruhr coal exceeding available supplies (a situation not necessarily justifying the declaration of a serious shortage in the Community), in inequalities in supplies to consumers and dealers ;

WHEREAS the permission granted under Sections 2, 2 and 6, 2 of the Articles of Association also to sell fuels

- (a) not produced by the collieries, plants, etc. of the member Mining Companies, or

¹ "Werksebstverbrauch" = deliveries to works with which the producing collieries are financially linked.

² "Landabsatz" = direct sales to local consumers.

- (b) produced by such collieries, plants, etc. (mining concessions, parts of such concessions, pits, coking-plants and briquetting-works) as have been acquired by the member Mining Companies subsequent to the conclusion of the agreement, whether as their own property, for usufruct, on lease, or in any other manner,

might cause the Selling Agency's influences in the market to be extended in a measure incompatible with Article 65, 2 of the Treaty ;

WHEREAS this additional sale of fuels, provided it is limited to 500,000 metric tons per annum, does not involve such an extension of influence, and whereas the High Authority reserves the right, as regards any increase in these additional sales over and above the tonnage mentioned, to proceed to a concrete examination of the situation, in conformity with the provisions of Article 65, 2 of the Treaty ;

WHEREAS, therefore, the permission granted under Sections 2, 2 and 6, 2 of the Articles of Association can only be approved in respect of a total of 500,000 metric tons per annum, and special authorization must be requested in respect of any additional tonnage ;

WHEREAS the other mining companies of the Ruhr coalfield, apart from some extracting very small quantities, have likewise joined to form two other selling agencies with very much the same aggregate output, to wit, the Präsident Ruhrkohlen-Verkaufsgesellschaft and the Geitling Ruhrkohlen-Verkaufsgesellschaft ;

WHEREAS all the mining companies belonging to these three selling agencies have at the same time set up certain joint organizations ;

WHEREAS no authorization under Article 65, 2 of the Treaty is required for some of these organizations, which perform no duties of a nature likely to restrict competition in the Common Market, viz.

- (a) the Ruhrkohlen-Exportgesellschaft m.b.H., responsible for the sale of fuel to areas outside the Common Market,
- (b) the Ruhrkohlen-Beratungsgesellschaft m.b.H., responsible mainly for inquiry into and encouragement of the technical and economic utilization of coal, for co-operation in matters of grading, for collective publicity for Ruhr coal, for market research and observation, and for transport problems,
- (c) the Ruhrkohle-Treuhandgesellschaft m.b.H., responsible as trustee, for all accounting, financial and clearing matters, for the administration of assets, and for the punched-card control system ;

WHEREAS various other joint measures regarding the setting-up of the Joint Office and the Standards Committee, the decisions of the Standards Committee, and a number of financial arrangements, are authorized by the High Authority in its Decision No. 8/56, of February 15, 1956 (*Official Gazette of the Community*, p. 82), in conformity with Articles 65, 2 and 53, a of the Treaty, in so far as such measures are necessary to the aim and object of each of the three Ruhr coal selling agencies, viz. the substantial improvement of fuel distribution, with due regard for the conditions prevailing in the coalmining industry ;

WHEREAS over and above the limits therein defined, all agreements, decisions and practices agreed and adopted among the mining companies of the Ruhr coalfield or among the three selling agencies with the aim of restricting competition are forbidden under Article 65, 1 of the Treaty, and whereas such agreements, decisions and practices cannot be authorized under Article 65, 2 of the Treaty, inasmuch as this would make it possible for the enterprises to determine prices and/or to control the production and marketing of a substantial proportion of the Community's coal ;

WHEREAS this authorization is intended, accordingly, to safeguard, by appropriate limitations and conditions, the independence of the three Ruhr coal selling agencies, and more particularly the possibility of developing an autonomous production and marketing policy within each agency ;

WHEREAS it would be incompatible with these requirements

- (a) for any director responsible for the management of one selling agency to be at one and the same time a director of another, the chairman of the Joint Office, a director of the Ruhrkohlen-Exportgesellschaft, or a director of the Ruhrkohle-Treuhandgesellschaft ;
- (b) for any agent or representative of one selling agency to act at one and the same time as agent or representative of another ;
- (c) for a selling agency to make funds accumulated by it available, in the form either of a loan or of a guarantee, to another selling agency, or to a mining company belonging to another agency ;
- (d) for any amendment to the Articles of Association, or to decisions by the General Meeting, the Supervisory board or any other body constituted by the Selling Agency, to be contingent on the co-operation of enterprises not belonging to that Selling Agency ;

WHEREAS the Mining Companies forming the Mausegatt Ruhrkohlen-verkaufsgesellschaft, inasmuch as they are entitled under the High Authority's Decision No. 8/56, of February 15, 1956, to co-operate with the Joint Office and the Standards Committee, are at the same time required to make use of the powers conferred upon them by the Articles of the Selling Agency, the Joint Office, and the Standards Committee, and by the decisions of the Standards Committee, in order to achieve the object of such co-operation, viz. the offsetting of types and grades, the balancing of employment, and the elimination of disparities in the event of tightness in the supply situation ;

WHEREAS a joint-selling system affords the Mining Companies a position of considerable influence in the market, which in turn makes it possible to introduce into a marketing system practices *vis-à-vis* consumers and/or dealers which contravene the provisions of Article 4, *b* and *d* of the Treaty, and, in particular, the prohibition of discrimination and allocation of markets ;

WHEREAS, accordingly, the Mining Companies should, without prejudice to the special provisions of the present decision on the agreements of February 6, 1956, concerning trading regulations, be obliged by appropriate conditions to comply with the prohibitions contained in Article 4, *b* and *d* of the Treaty ;

WHEREAS it would, in particular, be an infringement of these provisions if the Mining Companies, or the Selling Agency, were to prevent their customers (wholesalers or consumers), either directly or indirectly (*e.g.* by making difficulties with regard to the provisions of shipping space), contrary to the delivery terms, from taking delivery of their fuel ex-colliery, ex-coal port or f.o.b. Duisburg-Ruhrort and transporting it either by their own means or through a firm commissioned by them ;

WHEREAS the Mining Companies, or the Selling Agency, would likewise be contravening these provisions if, where their delivery terms allow rebates on sales to direct-buying wholesalers, they were to grant such rebates only provided the direct-buying wholesaler then sold direct to particular consumers or retailers, and were to refuse similar rebates if the wholesaler sold the fuel to other wholesalers for resale to consumers or retailers ;

WHEREAS the Mining Companies have, by their agreements of February 6, 1956, laid down the conditions on which the Mausegatt Ruhrkohlen-Verkaufsgesellschaft, formed by these enterprises for the joint selling of their fuel, may

- (a) supply consumers and dealers direct,
- (b) decline to supply consumers and dealers direct ;

WHEREAS these agreements specify, in particular, the following criteria for distinguishing consumers and dealers supplied direct from consumers and dealers excluded from direct supplies :

- (a) for consumers:
 - a minimum consumption of 30,000 metric tons per annum ;
- (b) for dealers:
 - a minimum turnover of 12,500 metric tons per annum obtained from the Selling Agency and sold within a particular sales area ;¹
 - a minimum turnover of 25,000 metric tons per annum obtained from the Ruhr coal selling agencies and sold within the same sales area ;
 - a minimum turnover of 40,000 metric tons per annum obtained from Community coalfields and sold within the same sales area ;
 - a minimum turnover of 75,000 metric tons per annum obtained from Community coalfields and sold within the Common Market ;

WHEREAS agreements of this nature amount to an allocation of customers and markets within the meaning of Articles 4, *d* and 65, 1 of the Treaty ;

WHEREAS agreements of this nature may, notwithstanding, be authorized in accordance with Article 65, 2 of the Treaty, in so far as the system adopted

- (a) contributes to a substantial improvement in the distribution of fuel,
- (b) is not more restrictive than is necessary for the purpose, and does not give either the producer or the dealer the power to control or limit the selling of a substantial proportion of the fuel produced,
- (c) does not contravene the prohibition of discrimination (Article 4, *b* of the Treaty) ;

¹ The delimitation of the sales areas is shown in the annex to this Decision.

WHEREAS the agreements between the Mining Companies not to supply consumers with an annual consumption of less than 30,000 metric tons are compatible with these provisions, inasmuch as this limitation

- (a) is based on objective and non-discriminatory criteria,
- (b) does in fact conduce to a substantial improvement in the distribution of fuel, since the producers thus have to confine their direct sales to certain large-scale buyers ;

WHEREAS the Ruhr Selling Agency existing hitherto used in some exceptional cases to deal through certain wholesalers even when supplying consumers whose annual consumption was above the minimum tonnage laid down for direct supply ;

WHEREAS the agreement among the Mining Companies to retain this exception over a further two years does not constitute discrimination, since under this transitional regulation the supplying of such consumers is permitted, without discrimination, to all coal wholesalers in the Community ;

WHEREAS the High Authority further reserves the right to decide at a later date whether and on what conditions the Mining Companies will be within their rights in declining to supply through dealers such consumers as can in fact obtain their fuel direct from the producers but wish notwithstanding to buy them through dealers ;

WHEREAS the criteria laid down in the trading regulations regarding the direct supplying of dealers are, with few exceptions, also compatible with the provisions of Article 65, 2 of the Treaty cited above, since

- (a) they help to delimit, in accordance with the particular characteristics of the coal trade, the activities of the different types of wholesaler (direct-buying wholesalers, other wholesalers), and consequently contribute towards a substantial improvement in the distribution of fuel ;
- (b) in view of the size of the sales areas, the probable number of wholesalers operating there, and other features of the different areas (e.g. ratio of sales of fuel from a selling agency to sales of fuel from other coalfields), and in view of the revision clause (amendment of the conditions of admission should more than 10% of the dealers previously admitted be ruled out), the system adopted for delimiting the sales areas neither has discriminatory effects nor puts a limited number of dealers in the sales areas in a position to restrict competition in a manner incompatible with the provisions of Article 65, 2 of the Treaty ;

WHEREAS the further condition prescribed for entitlement to direct buying,

namely, that the dealer shall have marketed within his sales area a minimum of 25,000 metric tons per annum of fuel obtained from the Ruhr coal selling agencies,

does, however, mean that the dealer, in order to gain the advantage of direct buying, will choose to obtain fuel up to the specified quantity of 25,000 metric tons from the other two Ruhr coal selling agencies, and thus will defer buying from producers in other coalfields ;

WHEREAS this criterion

- (a) gives rise to discrimination, more particularly vis-à-vis producers in other coalfields of the Community,
- (b) is more restrictive than is necessary for the purpose of delimitation, which is simply to establish a norm for a given volume of wholesale trading ;

WHEREAS this section of the agreements on trade regulations is thus incompatible with the prohibition contained in Article 4, *b* of the Treaty and with the provision of Article 65, 2 of the Treaty, and accordingly cannot be authorized ;

WHEREAS in regard to the entitlement of wholesalers to direct supplies the Ruhr coal selling organization existing hitherto used to follow a system which did not lay down equal conditions for all dealers within the Common Market ;

WHEREAS, accordingly, the regulations now adopted by the Mining Companies must, in order to obviate unlawful discriminations between dealers in the Common Market, be so implemented as to ensure that all dealers in the Common Market have the same chance of being admitted as direct buying wholesalers, on the basis of their purchases over the preceding coal year ;

WHEREAS the new trading regulations contain a special transitional regulation to the effect that, irrespective of the new criteria laid down for the future, those dealers shall be admitted for the time being as direct buying wholesalers who either

- (a) were already being treated as direct-buying wholesalers during the coal year 1955-56, or
- (b) can prove that, during the coal year 1955-56, they complied with the conditions then entitling to treatment as direct-buying wholesalers,

until such time as it is possible to ensure adequate supplies of fuel from the Selling Agency over a whole coal year ;

WHEREAS there is no objection to such a stipulation inasmuch as it facilitates the transition from the old regulations to the new ;

WHEREAS this transitional regulation must, nevertheless, be limited in its application to the coal year 1956-57, since otherwise a distinction not justified by the facts of the case would grow up between

- (a) the dealers admitted under this transitional regulation (mainly dealers established in the German Federal Republic, who would not be required, in particular, to achieve the highest of the reference tonnages specified, namely, a turnover of 75,000 metric tons per annum within the Community), and
- (b) the dealers admitted only under the new regulations (mainly dealers established outside the German Federal Republic, who would have to prove that they had in fact achieved this figure of 75,000 metric tons per annum) ;

WHEREAS the Mining Companies have further covenanted to implement the trading regulations only in respect of dealers in those territories of the Common Market in which similar non-discriminatory regulations exist in respect of the activities of all dealers in the Common Market ;

WHEREAS this categorical restriction amounts in itself to a discrimination, since it means that dealers in the Common Market territories concerned will be treated differently from those in the other territories ;

WHEREAS there is no justification in fact for this unequal treatment, since

- (a) it is the duty of the High Authority to take action against existing discriminations within the Common Market,
- (b) a producer may not counter a discrimination practised by others against particular dealers by similarly discriminating against these dealers ;

WHEREAS this section of the agreements on trading regulations is, therefore, inconsistent with the prohibition contained in Article 4, *b* of the Treaty and with the provisions of Article 65, 2 of the Treaty, and accordingly cannot be authorized ;

WHEREAS the trading regulations adopted by the Mining Companies in respect of joint selling through the Mausegatt Ruhrkohlen-Verkaufsgesellschaft are identical with the trading regulations laid down for the other two Ruhr coal selling agencies ;

WHEREAS the Mining Companies have, notwithstanding, agreed that any amendment of their trading regulations at any time after April 1, 1957, will require a majority of 60% of the votes of all member Mining Companies, a necessary prerequisite being that it should be possible to amend the trading regulations of the Mausegatt Ruhrkohlen-Verkaufsgesellschaft where the Mining Companies consider, in the light of one year's experience, that such amendment is desirable, independent of developments in the other selling agencies, and independent of any co-operation on the part of those mining companies which do not belong to the Mausegatt-Ruhrkohlen-Verkaufsgesellschaft ;

WHEREAS the agreements entered into by the Mining Companies on December 13, 1955, and February 6, 1956, regarding joint selling through the Mausegatt Ruhrkohlen-Verkaufsgesellschaft and the introduction of trading regulations are, accordingly, necessary for any substantial improvement of the distribution of fuel ;

WHEREAS these agreements, in conjunction with the restrictions and conditions contained in this decision, do not go further than is necessary for their purpose, and whereas in view of the degree of this Selling Agency's influence upon the market, they do not give the Mining Companies the power to determine prices or to control or restrict production or distribution in respect of a substantial proportion of the fuel in the Common Market ;

WHEREAS the High Authority will exercise constant supervision to ensure that the parties concerned are abiding by the terms of the authorization granted, and are, in particular, observing the restrictions and conditions therein contained, and that the corpus of measures introduced by them neither restricts competition more than is necessary for the purpose nor contravenes any other provisions of the Treaty ;

WHEREAS, accordingly, the corpus of agreements is in conjunction with the necessary restrictions and conditions, compatible with the provisions of Article 4, *b* and *d* and of Article 65, 2 of the Treaty,

DECIDES :

PART ONE JOINT SELLING

Article 1

The agreements entered into by the following Mining Companies :

Gewerkschaft der Steinkohlenzeche Petrus Segen, Niederstüter
Concordia Bergbau AG, Oberhausen
Bergwerksgesellschaft Dahlbusch, Gelsenkirchen
Hamborner Bergbau AG, Duisburg-Hamborn
Friedrich Thyssen Bergbau AG, Duisberg-Hamborn
Bergwerksgesellschaft Hibernia, AG, Herne
Niederrheinische Bergwerks AG, Neukirchen
Langenbrahm Steinkohlenbergbau AG, Essen
Bergbau AG Constantin der Grosse, Bochum
Diergardt-Mevissen Bergbau AG, Rheinhausen
Emscher-Lippe Bergbau AG, Datteln
Bergbau AG Ewald-König Ludwig, Herten
Dortmunder Bergbau AG, Dortmund
Hansa Bergbau AG, Dortmund
Erin Bergbau AG, Castrop-Rauxel
Gewerkschaft des Steinkohlenbergwerks Haus Aden, Herten
Gewerkschaft des Steinkohlenbergwerks Victoria Mathias, Essen
Steinkohlenbergwerk Westfalen AG, Ahlen

concerning joint selling of fuel from their collieries within the Common Market,

as contained under heads 1 and 2, c of the Articles of Association of the Mausegatt Ruhrkohlen-Verkaufsgesellschaft m.b.H., and in Annex 7 to the agreements of December 13, 1955 (registered under No. 1268/1955 at the offices of Ewald Leveloh, notary public, Essen) and supplemented by the additional agreements of February 6, 1956 (registered under No. 155/1956 at the offices of Ewald Leveloh, notary public, Essen), are hereby authorized, subject to any dismissal, restriction or condition contained in the Articles hereafter enumerated.

Article 2

The joint selling of fuel not produced by the collieries, plants etc. of the member Mining Companies (Section 2, 2 of the Articles of Association), or produced by such collieries, plants etc. as shall have been acquired by the member Mining Companies subsequent to the conclusion of the agreement of December 13, 1955, whether as their own property for usufruct, on lease, or in any other manner (Section 6, 3 of the Articles of Association), is authorized only in respect of a total of 500,000 metric tons per annum. Any joint selling of tonnages over and above this figure shall require special authorization by the High Authority.

Article 3

Authorization is granted subject to the following conditions :

1. Members of the Management of the Selling Agency must not at one and the same time hold any post as

- (a) member of the Management of the Präsident Ruhrkohlen-Verkaufsgesellschaft ;
- (b) member of the Management of the Geitling Ruhrkohlen-Verkaufsgesellschaft ;
- (c) chairman of the Joint Office set up by the three Ruhr coal selling agencies ;
- (d) member of the Management of the Ruhrkohlen-Exportgesellschaft m.b.H. ;
- (e) member of the Management of the Ruhrkohle-Treuhandgesellschaft m.b.H.

2. Agents and representatives of the Selling Agency must not at one and the same time act as agents or representatives of the Präsident Ruhrkohlen-Verkaufsgesellschaft, or of the Geitling Ruhrkohlen-Verkaufsgesellschaft.

3. The Selling Agency must not out of its own funds, either directly or through the Ruhrkohle-Treuhandgesellschaft m.b.H., advance loans or furnish guarantees to any other Ruhr coal selling agency, or to any mining company belonging to such a selling agency.

4. The Selling Agency shall establish and implement its general conditions governing the marketing of its products, and, in particular, the provisions concerning the direct supplying of consumers and direct supplying of dealers, as well as any further agreements limiting the activities of a dealer to a specific geographical area, in such a manner that the said conditions and agreements shall not contravene the prohibitions contained in Article 4, *b* and *d* of the Treaty.

This provision shall in no way affect the restrictions and conditions contained in Part Two of this decision, regarding agreements entered into by the enterprises concerned in respect of trading regulations.

5. Where the delivery terms of the Mining Companies or of the Selling Agency allow delivery ex-colliery or ex-coal port, neither the Mining Companies nor the Selling Agency may prevent the buyer from taking delivery of his fuel ex-colliery or ex-coal port and transporting it either by his own means or through a firm commissioned by him.

6. Where the delivery terms of the Mining Companies or of the Selling Agency allow delivery f.o.b. Duisburg-Ruhrort, neither the Mining Companies nor the Selling Agency may prevent the buyer from taking delivery of his fuel f.o.b. Duisburg-Ruhrort and transporting it either by his own means or through a firm commissioned by him.

7. Should the buyer wish to transport his fuel either by his own means or through a firm commissioned by him, neither the Mining Companies nor the Selling Agency may discriminate against him in relation to other buyers regarding transport arrangements, and more particularly regarding the provision of shipping space.

8. Where the Mining Companies or the Selling Agency grant certain rebates to direct-buying wholesalers on purchases for resale to consumers and retailers, such wholesalers shall be granted the same rebates even if they supply the fuel to other wholesalers for resale by them to these consumers and retailers.

9. The Mining Companies and the Directors of the Selling Agency shall make every effort within the powers vested in them under

(a) the Articles of Association of the Mausegatt Ruhrkohlen-Verkaufsgesellschaft m.b.H. dated December 13, 1955,

(b) the agreement instituting a Standards Committee, dated December 13, 1955,

(c) the decisions taken by the Standards Committee,

(d) the agreement instituting a Joint Office, dated December 13, 1955, to avoid an inequitable distribution among the workers of the reduced number of jobs which might result from any decline in demand, and to avoid inequalities in deliveries in the event of tightness in the supply situation.

10. The Selling Agency shall communicate to the High Authority without delay

(a) all decisions by the General Meeting and by the Supervisory Board ;

(b) all agreements by which the Ruhrkohle-Treuhandgesellschaft m.b.H. is authorized, as trustee, to handle all accounting, financial and clearing matters, the administration of assets, and the punched-card control system ;

(c) all amendments and supplements to the decisions and agreements specified under (a) and (b) above.

PART TWO

TRADING REGULATIONS

Article 4

The agreements entered into by the Mining Companies listed in Article 1 above, concerning the introduction of trading regulations with effect from April 1, 1956,

as embodied in the agreements of February 6, 1956 (registered under No. 155/1956, at the offices of Ewald Leveloh, notary public, Essen), are hereby authorized, subject to any dismissal, restriction or condition contained in the Articles hereafter enumerated.

Article 5

1. The agreement entered into by the Mining Companies to make the wholesale trade responsible for all transactions with industrial consumers whose consumption over the past coal year has not exceeded 30,000 metric tons of hard coal, hard-coal coke and hard-coal briquettes (I, 1 and 3 of the trading regulations) is hereby authorized.

2. The agreement entered into by the Mining Companies to make the coal wholesale trade responsible also, up to and including March 31, 1958, for transactions with those industrial consumers whose consumption over the coal year 1955-56 has in fact been in excess of 30,000 metric tons of the fuels mentioned in paragraph 1 above, but who, by way of exception have up to now been supplied through the coal wholesale trade (I, 2 of the trading regulations) is hereby likewise authorized.

3. The High Authority reserves the right to decide at a later date whether industrial consumers with a consumption in excess of 30,000 metric tons of the fuels mentioned in paragraph 1 above can be refused facilities for obtaining supplies through the trade if they desire to buy in this way.

Article 6

The agreement entered into by the Mining Companies to make the coal wholesalers responsible for supplying the coal retail trade (I, 4 of the trading regulations) is hereby authorized.

Article 7

The agreement entered into by the Mining Companies regarding the admission of dealers as coal wholesalers (II, 1 of the trading regulations and annex) is hereby authorized in so far as the direct supplying of any coal wholesalers (whereby he becomes a "direct-buying wholesaler") is made conditional upon the following:

1. Such wholesaler shall in the previous coal year have sold in the Common Market not less than 75,000 metric tons of hard coal, hard-coal coke, hard-coal briquettes, brown-coal briquettes, low-temperature coke of lignite and/or bituminous coal from Community coalfields, and/or of gas coke.

2. Such wholesaler shall in the previous coal year have sold in the sales area to which he is admitted¹ not less than 40,000 metric tons of the fuels mentioned in paragraph 1 above from Community coalfields, and/or of gas coke.

3. Such wholesaler shall in the previous coal year have sold in the sales area concerned not less than 12,500 metric tons of fuels obtained from the Selling Agency.

4. Such wholesaler shall meet the requirements usually demanded of a wholesaler (e.g. solvency, domicile in the sales area, stock-keeping facilities, acquaintance with the market and with the commodities concerned, a large clientèle, a considerable range of *types and grades marketed*). In respect of stock-keeping, this shall apply only in so far as such stock-keeping can be reasonably expected, having regard to the transport regulations obtaining (particularly the freight rates), and to the nature of the trading area supplied by the dealer concerned.

Article 8

The agreement entered into by the Mining Companies regarding the admission of dealers as coal wholesalers (II, 1 of the trading regulations and annex) is not authorized where the direct supplying of any coal wholesaler is made conditional upon the further provision that such wholesaler

¹ The delimitation of the sales areas is shown in the annex to this decision. Cf. also Article 9, 5.

shall in the previous coal year have sold in the sales area to which he is admitted not less than 25,000 metric tons of fuels obtained from the Ruhr coal selling agencies.

Article 9

In so far as this decision authorizes the agreements entered into by the Mining Companies regarding the admission of dealers as coal wholesalers, such authorization shall be contingent on the following restrictions and conditions:

1. The rules regarding the admission of dealers as direct-buying coal wholesalers shall be applied in such a manner that the Selling Agency shall at the beginning of each coal year give to all dealers within the Common Market, without discrimination, the opportunity of producing evidence of entitlement to direct buying, on the basis of the tonnages of fuels from the Selling Agency and fuels from Community coalfields bought by them, directly or indirectly, over the previous coal year.

2. In respect of the first admission, for the coal year 1956-57, this regulation shall be implemented as follows:

(a) In so far as admission as a wholesaler depends on the dealer's having over the previous coal year sold not less than 12,500 metric tons of fuel obtained from a selling agency (cf. Article 7, 3 above), the dealer shall be deemed to fulfil the requirements if he can show

(i) that he obtained this tonnage during the coal year 1955-56 directly from one or more of the six former Ruhr coal selling agencies, or

(ii) that he obtained this tonnage during the coal year 1955-56 indirectly, *i.e.* from a wholesale firm or organization which in its turn obtained that tonnage directly or indirectly from one or more of the six former Ruhr coal selling agencies.

(b) If, in accordance with these principles, the tonnage of Ruhr coal obtained by any wholesaler over the coal year 1955-56 is not less than 12,500 metric tons, that wholesaler shall then be entitled to claim admission by any selling agency he may select.

(c) If the tonnage of Ruhr coal obtained by any dealer over the coal year 1955-56 is greater than 12,500 metric tons, each additional tonnage shall entitle to admission by another selling agency, provided that additional tonnage is not less than 12,500 metric tons in each case.

3. Furthermore, under the agreement entered into by the Mining Companies (II, 2 of the trading regulations), admission as direct-buying wholesalers shall be extended, during a transition period up to the end of the coal year 1956-57, to those wholesalers who either

(a) were already supplied as direct-buying wholesalers during the coal year 1955-56, or

(b) can show that during the coal year 1955-56, they fulfilled the conditions then obtaining for admission as direct-buying wholesalers.

The agreement entered into by the Mining Company (II, 2 of the trading regulations) to retain this transitional regulation until such time as it has been possible to ensure an adequate supply of fuel through the Selling Agency over a whole coal year is not authorized.

4. Should it emerge, upon the expiry of the transition period specified in paragraph 3 above, that, in the implementation of the rules authorized under Article 7 above, more than 10% of the dealers trading as wholesalers within a given sales area during the coal year 1955-56 no longer fulfil the conditions laid down for admission as direct-buying wholesalers, the Selling Agency shall, in accordance with the agreements entered into on February 6, 1956, regarding trading regulations (II, 2, fourth paragraph), so amend its conditions as to enable not less than 90% of the dealers trading as wholesalers in the sales area concerned during the coal year 1955-56 to be admitted.

5. Any alteration of the sales areas as given in the annex to this decision shall require the authorization of the High Authority, provided such alterations are not merely minor boundary adjustments

Article 10

The agreement entered into by the Mining Companies (II, 3 of the trading regulations) to apply the rules regarding the admission of dealers only in respect of dealers in those areas of the Common Market in which similar non-discriminatory regulations are in force regarding the activities of all dealers in the Common Market is not authorized.

Article 11

1. The agreement entered into by the Mining Companies regarding the requirements for an amendment of the trading regulation (IV of the trading regulations), *viz.*

(a) up to and including March 31, 1957, a majority of 75% of the votes of all the member Mining Companies,

(b) after that date, a majority of 60% of the votes of all the member Mining Companies,

is hereby authorized.

2. Any action to render these conditions more stringent shall be permissible only subject to prior authorization by the High Authority under Article 65, 2 of the Treaty.

PART THREE

GENERAL PROVISIONS

Article 12

All authorizations contained in this decision shall be subject to the following restriction.

Any amendment

(a) to the Articles of Association of the Mausegatt Ruhrkohlen-Verkaufsgesellschaft m.b.H. dated December 13, 1955, or to the supplementary agreements of February 6, 1956,

(b) to a resolution or other decision by the General Meeting of the Member Mining Companies, the Supervisory Board, or other representative body of that selling agency,

(c) to the decision on trading regulations, dated February 6, 1956,

shall, in accordance with the provisions of the Articles of Association of the Mausegatt Ruhrkohlen-Verkaufsgesellschaft and of the decision on trading regulations, be made with the co-operation of none but the Mining Companies forming that Selling Agency.

Article 13

1. In accordance with Articles 47 and 65, 3 of the Treaty the High Authority will exercise constant supervision, to the extent it may deem necessary, to determine whether the Mining Companies and the Mausegatt Ruhrkohlen-Verkaufsgesellschaft are abiding by the terms of the authorizations granted under this decision, and, in particular, whether they are observing the restrictions, conditions and obligations contained therein, and whether the corpus of measures introduced by the parties concerned under these arrangements is essential to the achievement of the purpose defined in Article 65, 2, *a* of the Treaty, while not contravening the provisions of the Treaty or involving more extensive restrictions than are necessary to their purpose.

2. The High Authority reserves the right to fix the practical details of its methods of supervision.

Article 14

This decision shall come into force upon notification to the Mining Companies. It shall cease to have effect on March 31, 1959.

This decision was deliberated and adopted by the High Authority at its session on February 15, 1956.

For the High Authority,

FRANZ ETZEL,

Vice-President.

ANNEX TO DECISION No. 7/56

Delimitation of Sales Areas

(cf. Article 7 of the Decision)

Sales Area I (Hamburg and Netherlands)

Land Schleswig-Holstein

The Hanseatic City of Hamburg

The Hanseatic City of Bremen

in Land Lower Saxony :

the districts¹ of Aurich, Osnabrück and Stade

the district² of Oldenburg

the district of Lüneburg :

the circles³ of Harburg and Lüneburg

in the district of Hanover :

the counties⁴ of Diepholz and Hoya

The Netherlands

¹ *Regierungsbezirke*

² *Verwaltungsbezirk*

³ *Kreise*

⁴ *Grafschaften*

Sales Area 2 (Duisburg, Dortmund, Hanover)

in Land Lower Saxony :

the districts of Lüneburg and Hanover, exclusive of the portions
belonging to Sales Area 1

the district² of Brunswick

the district of Hildesheim

in Land Hesse :

the district of Kassel

the northern portion of the district of Darmstadt (Alsfeld, Giessen,
Lauterbach)

the district of Wiesbaden, with the circles of Biedenkopf, Dillkreis,
Limburg, Oberlahnkreis and Wetzlar

in Land North Rhine-Westphalia

the districts of Detmold, Münster, Arnsberg and Düsseldorf

Sales Area 3 (Cologne, Aachen, Belgium and Luxembourg)

in Land North Rhine-Westphalia :

the districts of Cologne and Aachen (Aix-la-Chapelle)

in Land Rhineland-Palatinate :

the district of Koblenz (exclusive of Birkenfeld and Kreuznach)

the district of Montabaur

the district of Trier (exclusive of the circles of Bernkastel, Saarburg
and Trier)

Luxembourg and Belgium

Sales Area 4 (Southern Germany and Eastern France)

Land Bavaria and Land Württemberg

in Land Hesse :

the district of Darmstadt (where not included in Sales Area 2)

the district of Wiesbaden (exclusive of the circles included in Sales Area 2)

in Land Rhineland-Palatinate :

the districts of Rhenish Hesse and the Palatinate

in the district of Koblenz :

the circles of Birkenfeld and Kreuznach

in the district of Trier :

the circles of Bernkastel, Saarburg and Trier

The Saar and Eastern France, viz, the departments of Moselle, Meuse,
Haute-Marne, Côte d'Or, Meurthe-et-Moselle, Bas-Rhin, Haut-Rhin,
Vosges, Haute-Saône, Doubs and Jura, and the Territoire de Belfort.

Sales Area 5

Northern France including the territory served by Seine river transport
facilities.

Sales Area 6

Remainder of France.

Sales Area 7

Italy.

² Verwaltungsbezirk.

DECISION No. 8/56, of February 15, 1956, concerning the authorization of certain joint measures and arrangements introduced by the coalmining companies of the Ruhr coalfield

THE HIGH AUTHORITY,

HAVING regard to Articles 4, 47, 53, a) and 65 of the Treaty, and to Section 12 of the Convention containing the Transitional Provisions ;

HAVING regard to Decision No. 37/53, of July 11, 1953, concerning the date upon which the prohibitions on cartels under Article 65 of the Treaty were to come into force (*Official Gazette of the Community, July 21, 1953, p. 153*) ;¹

HAVING regard to the applications of August 18 and 31, 1953, and to the supplementary applications of December 22, 1955, and February 6, 1956 ;

WHEREAS all the Mining Companies of the Ruhr coalfield, apart from some which are mining very small quantities, have joined to form three groups, each with very much the same aggregate output, each group co-operating in the joint selling of fuel from its collieries, viz. the

Steinkohlenbergwerk Heinrich Robert AG, Herringen

Bergwerke Essen-Rossenray AG, Essen

Bergbau AG Lothringen, Bochum

Mülheimer Bergwerksverein, Mülheim/Ruhr

Rheinpreussen AG für Bergbau und Chemie, Homberg/Niederrhein

Steinkohlenbergwerk Mathias Stinnes AG Essen

Gebr. Stumm GmbH, Zeche Minister Achenbach, Brambauer/Westfalen

Hoesch Bergwerks-AG, Dortmund

Gewerkschaft ver. Klosterbusch, Herbede/Ruhr

Steinkohlenbergwerk Friedrich der Grosse AG, Herne

Rheinlbe Bergbau AG, Gelsenkirchen

Graf Moltke Bergbau AG, Gelsenkirchen

Steinkohlenbergwerk Hannover-Hannibal AG, Bochum

Bergwerksgesellschaft Walsum mbH, Walsum/Niederrhein

Gewerkschaft Sophia Jacoba, Hückelhoven/Aachen

Harpener Bergbau AG, Dortmund

Monopol Bergbau AG, Kamen

Gewerkschaft Alte Haase, Dortmund

Gewerkschaft Gottessegen, Dortmund

forming the Geitling Ruhrkohlen-Verkaufsgesellschaft.

the

Deutsche Erdöl AG, Hamburg, Steinkohlenbergwerk Graf Bismarck, Gelsenkirchen

¹ This reference applies to the German, French, Italian and Dutch editions of the Official Gazette of the European Coal and Steel Community, published in Luxembourg.

Steinkohlenbergwerk Friedrich Heinrich AG, Kamp-Lintfort
 Steinkohlenbergwerk Mansfeld GmbH, Bochum
 Arenberg Bergbau-GmbH, Essen
 Altenessener Bergwerks-AG, Essen.
 Essener Steinkohlenbergwerke AG, Essen
 Gewerkschaft Auguste Victoria, Marl-Hüls
 Bochumer Bergbau AG, Bochum
 Carolinenglück Bergbau AG, Bochum
 Bergbau AG Neue Hoffnung, Oberhausen
 Heinrich Bergbau AG, Essen-Kupferdreh
 Klöckner-Bergbau Victor-Ickern AG, Castrop-Rauxel
 Klöckner-Bergbau Königsborn-Werne AG, Unna
 Märkische Steinkohlgewerkschaft, Heessen in Westfalen
 forming the Präsident Ruhrkohlen-Verkaufsgesellschaft,
 and the
 Concordia Bergbau AG, Oberhausen
 Bergwerksgesellschaft Dahlbusch, Gelsenkirchen
 Hamborner Bergbau AG, Duisburg-Hamborn
 Friedrich Thyssen Bergbau AG, Duisburg-Hamborn
 Bergwerksgesellschaft Hibernia AG, Herne
 Niederrheinische Bergwerks-AG, Neukirchen
 Langenbrahm Steinkohlenbergbau AG, Essen
 Bergbau AG Constantin der Grosse, Bochum
 Diergardt-Mevissen Bergbau AG, Rheinhausen
 Emscher-Lippe Bergbau AG, Datteln
 Bergbau AG Ewald-König Ludwig, Herten
 Dortmunder Bergbau AG, Dortmund
 Hansa Bergbau AG, Dortmund
 Erin Bergbau AG, Castrop-Rauxel
 Gewerkschaft des Steinkohlenbergwerks Haus Aden, Herten
 Gewerkschaft des Steinkohlenbergwerks Victoria Mathias, Essen
 Steinkohlenbergwerk Westfalen AG, Ahlen
 Gewerkschaft der Steinkohlenzeche Petrus Segen, Niederstüter
 forming the Mausegatt Ruhrkohlen-Verkaufsgesellschaft ;

WHEREAS, under their Articles of Association and in conformity with the restrictions and conditions contained in the authorizations issued by the High Authority on February 15, 1956 (Decisions Nos. 5/56, 6/56 and 7/56, *Official Gazette of the Community*, pp. 32, 49 and 65), these Selling Agencies are independent of one another ;

WHEREAS the object of each of these three Selling Agencies, namely, the substantial improvement of fuel distribution, with due regard for the conditions providing in the coalmining industry (offsetting of types and

grades, balancing of employment, elimination of disparities in the event of tightness in the supply situation), can be achieved only if all the Mining Companies and the three Ruhr Coal Selling Agencies work to a limited extent in co-operation, although joint measures and arrangements adopted with this end in view shall not be on a scale greater than necessary for the purpose ;

WHEREAS such co-operation is necessary

- (a) in order to ensure the offsetting of types and grades,
- (b) in order to avoid an inequitable distribution among the workers of the reduced number of jobs which might result from any decline in demand (balancing of employment),
- (c) in order to avoid inequalities in deliveries of coal from the Ruhr Coal Selling Agencies to consumers in the event of an appreciable excess of demand over saleable output and production,
- (d) in order to remedy any emergency or near-emergency as regards the supplying of consumers or the marketing of the collieries' production,
- (e) in order to save time and expense in the loading of sea-going vessels ;

WHEREAS, in fulfilment of these objectives, the three Selling Agencies will, under the agreement entered into on December 13, 1955, co-operate in a Joint Office in the following manner :

- (a) the Joint Office to negotiate concerning deliveries to consumers requiring over 50,000 tons of fuel per annum with the consumers concerned, provided the latter agree to this procedure and thereupon to allocate such orders among the three Selling Agencies, with a view to ensuring the offsetting of types and grades and the balancing of supplies and of employment,
- (b) the Joint Office, in the event of an appreciable excess of demand over supply, to issue directives for the uniform and non-discriminatory treatment of consumers,
- (c) the Joint Office to be able to introduce measures for the remedying of emergency situations and for the joint loading of seagoing vessels ;

WHEREAS the grouping of the Mining Companies in three approximately equal Selling Agencies is possible only provided certain standards, which are essential if the joint-selling scheme is to be on the required scale and to fulfil its proper purpose, are uniformly observed by all three Selling Agencies, namely,

- (a) general rules on the delimitation of the tonnages consumed by the Mining Companies themselves (collieries' own consumption, miners' concessionary coal),
- (b) general rules for the delimitation of the tonnages marketed not jointly but independently by the Mining Companies ("works' own consumption,"¹ i.e. sales to enterprises with which they are financially linked and "local sales"),²

¹ Werksebstverbrauch.

² Landabsatz.

- (c) general rules restricting works' own consumption and local sales, in order to avoid difficulties in regard to supply or employment in the event, respectively, of excessive or insufficient demand,
- (d) definitions and general rules on the balancing of employment ;

WHEREAS the Mining Companies have, by the agreements entered into on December 13, 1955, and the supplementary agreements entered into on February 6, 1956, covenanted

- (a) to set up a Standards Committee responsible for issuing such general rules and definitions,
- (b) having done so, to issue such rules and definitions concerning works' own consumption, local sales and the balancing of employment ;

WHEREAS such co-operation by the Mining Companies is further necessary

- (a) in order to prevent inequitable disparities in employment between one colliery and another, or difficulties in the marketing of fuel, from arising as a result of the differences in the location of the individual Mining Companies within the Ruhr coalfield, and of the differences in the effect of the geographical distribution of the Mining Companies in the three Selling Agencies upon the shipment of Ruhr coal by Rhine river transport or by sea, and upon any alignment which may be necessary with quotations from third countries (Articles 60, last paragraph, of the Treaty),
- (b) in order, in the event of disparities in employment between one colliery and another, to provide financial assistance to the enterprises where employment is reduced, by way of compensation for the drop in sales ;

WHEREAS, in order to achieve these objectives, the Mining Companies have, by the agreements entered into on December 13, 1955, instituted a number of financial arrangements, namely

- (a) in respect of the shipment of fuel to be carried via the River Rhine to the areas served by the inland waterways of the Common Market :

equalization of the different transport charges for carriage from pithead up to f.o.b. Duisburg-Ruhrort, by calculating for such charges an average rate uniform for all the Mining Companies,

- (b) in respect of the shipment of fuel to be carried by sea :

equalization of the different transport charges for carriage from pithead up to f.o.b. seaports between Antwerp and the lower reaches of the River Weser, by calculating for such charges an average rate uniform for all the Mining Companies,

- (c) in respect of alignment with quotations from third countries, under Article 60, last paragraph, of the Treaty :

compensation for any falling-off in receipts on such transactions in relation to the published price-schedules, by apportioning the differences in receipts among all the Mining Companies in accordance with a standard formula ;

(d) in respect of any inequitable distribution among the collieries or the reduced number of jobs resulting from any decline in demand :

financial arrangements for equalization payments according to the degree of employment in the different Mining Companies ;

WHEREAS the financial arrangements regarding the pooling of transport costs up to f.o.b. Ruhrort and f.o.b. seaport must not, however, induce the Mining Companies or the Selling Agencies, contrary to the prohibition of discrimination (Article 4, *d* and 60, 2, *b* of the Treaty), to charge concealed price increases or grant concealed rebates ;

WHEREAS the pooling of transport costs up to f.o.b. seaport must not entail any restriction of competition greater than is necessary for its purpose, as would be the case if the Mining Companies or the Selling Agencies were to make it a condition of sale that their customers (wholesalers or consumers) should agree to take delivery f.o.b. seaport ;

WHEREAS, accordingly, the Mining Companies and the Selling Agencies must not, under their delivery terms, oblige their customers to take delivery f.o.b. seaport, and must not conclude long-term agreements with their customers concerning delivery f.o.b. seaport for a period exceeding twelve months, in order that the customers may thus be left free to make other arrangements on the expiry of this trial period ;

WHEREAS the Joint Office's further duties in connection with transport do not prejudice the normal operation of competition, inasmuch as the Joint Office is not thereby empowered to interfere in the forwarding arrangements made by the Selling Agencies ;

WHEREAS these joint measures and arrangements, viz. the establishment of standards by the Standards Committee, the co-operation of the three Selling Agencies in the Joint Office, and the various financial arrangements, are necessary to ensure a substantial improvement in fuel distribution, with due regard for the offsetting of types and grades and the balancing of employment, while avoiding disparities in deliveries in the event of tightness in the supply situation ;

WHEREAS the arrangements made to this end do not restrict competition more than is necessary for their purpose, and do not give the enterprises concerned the power to control or restrict the prices, production or marketing of the fuel mined and produced in the Ruhr coalfield ;

WHEREAS the High Authority will exercise constant supervision to ensure that the parties concerned are abiding by the terms of the authorization granted, and are in particular, observing the restrictions and conditions contained therein, and that the corpus of measures introduced by them neither restricts competition more than is necessary for their purpose, nor contravenes any other provisions of the Treaty ;

WHEREAS the corpus of joint measures and arrangements thus authorized for the reorganization of the Ruhr coal selling system is of vital importance for the achievement of the objectives of the Common Market, and whereas therefore, without prejudice to the High Authority's right of supervision, it is necessary, in the interests of producers, consumers, dealers, and workers,

that the problems arising in connection with the co-ordinatory functions of the Joint Office, especially at times when demand is either excessive or insufficient, should be discussed with representatives of the groups concerned ;

WHEREAS to this end, a Committee is to be set up and attached to the Joint Office, consisting of representatives of producers, trade unions, consumers, and dealers in the Common Market, of the Federal Government and of the High Authority ;

WHEREAS the measures as a whole, in conjunction with the necessary restrictions and conditions, are, accordingly, compatible with the provisions of Article 65, 2 of the Treaty, and, as regards joint financial arrangements, with the provisions of Article 53, 1, a of the Treaty ;

after consulting the Consultative Committee and the Council of Ministers concerning the joint financial arrangements,

DECIDES :

PART ONE

JOINT OFFICE OF THE THREE RUHR COAL SELLING AGENCIES

Article 1

The agreements entered into by

the Geitling Ruhrkohlen-Verkaufsgesellschaft m.b.H.,

the Präsident Ruhrkohlen-Verkaufsgesellschaft m.b.H., and

the Mausegatt Ruhrkohlen-Verkaufsgesellschaft m.b.H.

concerning the setting-up of a Joint Office and the joint measures to be taken by that Office.

as embodied in Article 3 and in Annex 10 of the agreements entered into on December 13, 1955 (registered under No. 1268/1955, at the offices of Ewald Leveloh, notary public, Essen),

are hereby authorized, subject to the restrictions and conditions contained in the articles hereafter enumerated.

Article 2

1. The Management of the Joint Office shall consist of one representative of each Selling Agency and a Chairman.

2. The Management shall take its decisions by a majority of the votes recorded, except where unanimity is required. The Chairman shall have a casting vote.

Article 3

The Joint Office shall be authorized to negotiate with large-scale consumers whose annual consumption exceeds 50,000 metric tons regarding the sale of the fuel marketed by the three Selling Agencies, on the basis of the price-schedules and payment and delivery terms of the Selling Agency concerned, subject to the following restrictions and conditions:

1. The large-scale consumers concerned shall have declared their willingness to carry on negotiations for at least one year with the Joint Office instead of directly with the Selling Agencies.

2. The Joint Office shall allocate the tonnages for which contracts will be concluded among the Selling Agencies, with due regard to the offsetting of types and grades and the balancing of supplies.

3. Where there is a disparity in the degree of employment between one Selling Agency and another, the Joint Office shall, by allocating orders from large-scale consumers and from the Ruhrkohlen-Exportgesellschaft m.b.H., among the three Selling Agencies, ensure that there shall be no inequitable distribution among the workers of the reduced number of jobs resulting from any decline in demand. If necessary, orders already allocated shall be re-allocated among the Selling Agencies as far as may be required.

4. Allocation in accordance with the principles laid down in paragraph 3 above shall also be effected if, as a result of a decrease in the availabilities of particular grades coinciding with unchanged or increasing requirements, the three Selling Agencies should find themselves in appreciably different positions as regards their ability to supply their traditional customers.

5. The sales contracts transmitted by the Joint Office shall be concluded by the individual Selling Agencies on the basis of the price-schedules and payment and delivery terms of the Selling Agency concerned, without prejudice to the provisions of Article 60, 2 of the Treaty and the High Authority's decisions thereto pertaining.

Article 4

Should demand begin appreciably to exceed the saleable output and production made available by the Mining Companies, the following measures may be introduced :

1. The Management of the Joint Office may take decisions by a unanimous vote concerning the principles which shall govern the tonnages, types and grades to be supplied by the Selling Agencies to individual groups of consumers, such principles to be uniform, equitable and in accordance with the provisions of the Treaty. These decisions may not contain any stipulation whereby particular groups of consumers shall be treated according to different principles. Only those groups of consumers who are, for special and exceptional reasons, not in a comparable position as regards supplies (*e.g.* household consumers) may be supplied under a different arrangement from that obtaining in respect of consumers generally, and even they shall receive uniform treatment within their own particular consumer category.

These decisions must be notified forthwith to the High Authority. They shall become inoperative should the High Authority exercise its veto.

2. In the event of a threatened emergency as regards the supplying of customers ranking as "domestic consumers," "public utilities," "public transport," and "vital services" (*e.g.* hospitals, vital food-supply services), the Management of the Joint Office shall meet for consultation. It may take decisions, by a majority vote, with a view to remedying or averting such an emergency: these decisions shall, as regards their nature and duration, be not greater in scope than is necessary for their purpose. They must be notified forthwith to the High Authority, and shall become inoperative should the High Authority exercise its veto.

3. The Management of the Joint Office may, by a decision, establish a procedure to prevent individual customers from securing the advantage of larger deliveries by means of duplicate orders placed with more than one Selling Agency. Details of any such procedure shall be notified to the High Authority. The High Authority reserves the right to revoke or restrict these decisions where they contain greater restrictions on competition than are necessary for their purpose, or contravene any other provisions of the Treaty, in particular the prohibition of discrimination (Article 4, *b* of the Treaty).

Article 5

As regards deliveries aligned, in accordance with Article 60, last paragraph, of the Treaty, with quotations from third countries, the Management of the Joint Office shall be authorized to fix the tonnages of such deliveries, and the amount of the rebates to be granted.

Article 6

1. In the event of a threatened emergency or of circumstances outside the Joint Office's control, such as, in particular, technical trouble at the colliery, on the customer's premises or in connection with transport facilities, the Chairman of the Joint Office may introduce co-ordinatory measures designed to assist in marketing output which collieries are experiencing difficulty in selling, or in supplying consumers who are experiencing difficulty in obtaining the fuel required. These measures shall, as regards their nature and duration, be no greater in scope than is necessary for their purpose.

2. The nature and duration of these measures, together with the reasons therefor, shall be notified forthwith to the High Authority.

Article 7

As regards deliveries by the individual Selling Agencies f.o.b. seaport, the Chairman of the Joint Office may call upon the Selling Agencies to deliver out of contracts on hand such tonnages as may be required to make up the cargo of a ship.

Article 8

The Joint Office's functions in connection with transport shall be authorized subject to the restriction, that the Joint Office shall not thereby be allowed to interfere in the forwarding arrangements of the Selling Agencies.

Article 9

In order to ensure that the Joint Office shall exercise its functions in accordance with the terms of this decision, the Selling Agencies shall be authorized

- (a) to submit to the Joint Office monthly, quarterly and yearly forecasts giving details of the probable output and the tonnages available to the Mining Companies themselves (*e.g.* collieries' own consumption, works' own consumption, etc.) as well as details of probable requirements ;
- (b) to afford the Joint Office such assistance and information as may be necessary for it to carry out its tasks ;
- (c) to enter into an undertaking with the Joint Office to provide it with whatever tonnages may be necessary for it to operate its transactions on behalf of the individual Selling Agencies.

PART TWO

COMMON STANDARDS

Article 10

The agreements entered into by the following Mining Companies:

Gewerkschaft Alte Haase, Sprockhövel i.W.
Altessener Bergwerks-AG, Essen-Altenessen
Arenberg Bergbau-GmbH, Essen.
Gewerkschaft Auguste Victoria, Marl-Hüls
Deutsche Erdöl AG Hamburg, Steinkohlenbergwerk Graf Bismarck,
Gelsenkirchen
Concordia Bergbau AG, Oberhausen
Bergbau AG, Constantin der Grosse, Bochum
Bergwerksgesellschaft Dahlbusch, Gelsenkirchen
Diergardt-Mevissen Bergbau AG, Rheinhausen
Emscher-Lippe Bergbau AG, Datteln
Essener Steinkohlenbergwerke AG, Essen
Bergbau AG Ewald-König Ludwig, Herten i.W.
Steinkohlenbergwerk Friedrich d.Gr. AG, Herne i.W.
Steinkohlenbergwerk, Friedr. Heinrich AG, Kamp-Lintfort, Krs. Moers
Bergwerke Essen-Rossenray AG, Essen
Steinkohlenbergwerk, Hannover-Hannibal AG, Bochum-Hordel
Gew. der Steinkohlenzeche Petrus Segen, Niederstüter
Erin Bergbau AG, Castrop-Rauxel
Dortmunder Bergbau AG, Dortmund
Hansa Bergbau AG, Dortmund
Bochumer Bergbau AG, Bochum
Carolinenglück Bergbau AG, Bochum
Rheinelbe Bergbau AG, Gelsenkirchen
Graf Moltke Bergbau AG, Gelsenkirchen
Hamborner Bergbau AG, Duisburg-Hamborn
Friedrich Thyssen Bergbau AG, Duisburg-Hamborn
Gewerkschaft Gottessegen, Sprockhövel i.W.
Harpener Bergbau AG, Dortmund
Monopol Bergwerks AG, Kamen
Heinrich Bergbau AG, Essen-Kupferdreh
Steinkohlenbergwerk Heinrich Robert AG, Hamm i.W.
Bergwerksgesellschaft Hibernia AG, Herne
Hoesch Bergwerks-AG, Dortmund
Gewerkschaft des Steinkohlenbergwerks Haus Aden, Herten i.W.

Gewerkschaft ver. Klosterbusch, Herbede
 Klöckner-Bergbau Königsborn-Werne AG, Unna-Königsborn
 Langenbrahm Steinkohlenbergbau AG, Essen
 Bergbau AG Lothringen, Bochum
 Steinkohlenbergwerk Mansfeld GmbH, Bochum-Langendreer
 Märkische Steinkohlengewerkschaft, Heessen bei Hamm
 Steinkohlenbergwerke Mathias Stinnes AG, Essen
 Mülheimer Bergwerks-Verein, Mülheim-Ruhr
 Bergbau AG Neue Hoffnung, Oberhausen
 Niederrheinische Bergwerks AG, Neukirchen, Krs. Moers
 Rheinpreussen AG für Bergbau und Chemie, Homberg/Niederrhein
 Gewerkschaft Sophia Jacoba, Hückelhoven
 Gebr. Stumm GmbH/Zeche Min. Achenbach, Brambauer
 Klöckner-Bergbau Victor-Ickern AG, Castrop-Rauxel
 Gew. des Steinkohlenbergwerks Victoria Mathias, Essen
 Bergwerksgesellschaft Walsum mbH, Walsum
 Steinkohlenbergwerk Westfalen AG, Ahlen i.W.

concerning the setting-up of a Standards Committee, and the decisions to be taken in that Committee by the said Mining Companies concerning

- (a) works' own consumption
- (b) local sales,
- (c) balancing of employment,

all embodied in Section 5 and Annexes 15, 17, 18 and 19 of the agreements entered into on December 13, 1955 (registered under No. 1268/1955, at the offices of Ewald Leveloh, notary public, Essen), and supplemented by the further agreements entered into on February 6, 1956 (registered under No. 156/1956, at the offices of Ewald Leveloh, notary public, Essen), are hereby authorized, subject to any dismissal, restriction or conditions contained in the articles hereafter enumerated.

Article 11

The Mining Companies shall be authorized, in accordance with the provisions of the agreement of December 13, 1955, to set up a Standards Committee. They can in that Committee take decisions

- (a) establishing definitions, conditions and rules in respect of the following tonnages not marketed through a Selling Agency :
 - collieries' own consumption,
 - miners' concessionary coal and free gifts of coal,
 - works' own consumption,
 - special-delivery contracts,
 - local sales ;
- (b) establishing definitions and rules for the procedure to be followed for the balancing of employment ;

- (c) establishing the extent to be the same for all three Selling Agencies to which the Mining Companies' right to local sales, works' own consumption and special-delivery contracts is to be restricted in the interests of joint selling, in order to maintain the balance of employment and to counter any difficulties arising out of excessive demand.

Article 12

1. All decisions by the Standards Committee, and all amendments to such decisions, shall be notified forthwith to the High Authority.

2. Decisions concerning

- (a) definitions, conditions and rules in respect of the tonnages required for works' own consumption, special-delivery contracts and/or local sales, and accordingly not to be marketed through a Selling Agency,
- (b) definitions and rules for the procedure to be followed for the balancing of employment,
- (c) restrictions on the Mining Companies' right to local sales, works' own consumption and special-delivery contracts,

shall be operative only where authorized by the High Authority under Article 65, 2 of the Treaty.

Article 13

1. In accordance with the draft dated December 13, 1955 (Annex 17, to the minutes dated December 13, 1955 [registered under No. 1268/1955], supplemented by the further agreement entered into on February 6, 1956 [registered under No. 156/1956, at the offices of Ewald Leveloh, notary public, Essen]), the Mining Companies may, after the setting-up of the Standards Committee, take a decision concerning the tonnages which the Mining Companies exclude from sale through the Ruhr Coal Selling Agencies and sell directly to those consumers with whom they are financially linked (works' own consumption), or who are entitled to be supplied direct by virtue of special-delivery contract.

2. The Mining Companies shall notify the High Authority,

- (a) by April 10 of each year, of the total tonnage registered for the current coal year as required for works' own consumption and/or special-delivery contracts, divided into fixed and supplementary tonnages, and broken down by categories into hard coal, hard-coal coke and hard-coal briquettes ;
- (b) by April 10, July 10, October 10 and January 10 of each year, of the tonnages delivered during the preceding quarter for works' own consumption and/or on special-delivery contracts, broken down by categories into hard coal, hard-coal coke and hard-coal briquettes ;
- (c) by April 10, July 10, October 10 and January 10 of each year, of details of any substitution of deliveries under the fifth of works' own consumption and/or special-deliveries contracts by replacement of deliveries from other Mining Companies (V, 6 of the draft decision on works-own consumption, dated December 13, 1955).

Article 14

In accordance with the draft dated December 13, 1955 (Annex 18 to the minutes dated December 13, 1955 [registered under No. 1268/1955], supplemented by the further agreement entered into on February 6, 1956 [registered under No. 156/1956, at the offices of Ewald Leveloh, notary public, Essen]), the Mining Companies may, after the setting-up of the Standards Committee, take a decision concerning the tonnages which the Mining Companies exclude from sale through the Ruhr Coal Selling Agencies and sell either directly or through dealers.

exclusively to domestic consumers, small consumers, or industrial consumers with an annual consumption not exceeding 12,000 metric tons, such tonnages to be hauled by road and consumed within Land North-Rhine-Westphalia ("local sales").

Article 15

1. In accordance with the draft dated December 13, 1955 (Annex 19 to the minutes dated December 13, 1955 [registered under No. 1268/1955], supplemented by the further agreement entered into on February 6, 1956 [registered under No. 156/1956, at the offices of Ewald Leveloh, notary public, Essen]), the Mining Companies may, after the setting-up of the Standards Committee, take a decision concerning the procedure to be followed for the balancing of employment, whereby

in order to avoid an inequitable distribution among the workers of the reduced numbers of jobs resulting from any decline in demand, the orders on the books of the Ruhr Coal Selling Agencies, including orders channelled through the Joint Office, shall be allocated among the different Companies in accordance with a basic tonnage to be fixed, by uniform directives, for each Company.

2. This provision shall in no way affect the further financial measures authorized in Article 20 below in respect of the balancing of employment.

PART THREE

JOINT FINANCIAL ARRANGEMENTS

Article 16

The agreements entered into by

the Geitling Ruhrkohlen-Verkaufsgesellschaft m.b.H.,

the Präsident Ruhrkohlen-Verkaufsgesellschaft m.b.H., and

the Mausegatt Ruhrkohlen-Verkaufsgesellschaft m.b.H.,

and the agreements entered into by the Mining Companies listed in Article 9 of this decision concerning the institution of joint financial arrangements, all embodied in Section 6 of the agreement entered into by the Ruhr Coal Selling Agencies on December 13, 1955, concerning the setting-up of a Joint Office (Annex 10 to the minutes of December 13, 1955 [registered under No. 1268/1955, at the offices of Ewald Leveloh, notary public, Essen]), in the decisions of the General Meeting of the members of the Ruhr Coal Selling Agencies concerning the clearing procedure (Annexes 3, 6 and 9 to the

minutes of December 13, 1955 [Registered under No. 1268/1955, at the offices of Ewald Leveloh, notary public, Essen]), and in the draft decision on the balancing of employment dated December 13, 1955 (Annex 19 to the minutes of December 13, 1955 [registered under No. 1268/1955, at the offices of Ewald Leveloh, notary public, Essen]).

are hereby authorized, subject to the restrictions and/or conditions in the articles hereafter enumerated.

Article 17

1. The Management of the Joint Office may, by a decision applying to all the Mining Companies, institute joint financial arrangements whereby the different transport charges from pithead up to f.o.b. Duisburg-Ruhrort are to be charged to the consignee at a uniform rate, and the differences between the actual charges on individual deliveries offset out of the amounts thus received.
2. This authorization shall be subject to the following condition:
the said uniform rate shall be neither above nor below the average of the actual charges.

Article 18

1. The Management of the Joint Office may by a decision applying to all the Mining Companies, institute joint financial arrangements whereby the different transport charges from pithead up to f.o.b. seaports between Antwerp and the lower reaches of the River Weser are to be charged to the consignee at a uniform rate, and the differences between the actual charges on individual deliveries offset out of the amounts thus received.
2. This authorization shall be subject to the following conditions and restrictions :
 - (a) the said uniform rate shall be neither above nor below the average of the actual charges ;
 - (b) neither the Mining Companies nor the Selling Agencies may in their delivery terms insist that their customers (wholesalers or consumers) shall take delivery **f.o.b. seaport** ;
 - (c) the Mining Companies and the Selling Agencies may not conclude any agreement with their customers (wholesalers or consumers) concerning delivery f.o.b. seaport for a period exceeding twelve months.

Article 19

The Management of the Joint Office may, by a decision applying to all the Mining Companies, institute joint financial arrangements whereby the differences between the receipts calculated on the basis of the price-schedules and the receipts resulting from alignment with quotations from third countries, in accordance with Article 60, last paragraph, of the Treaty, are to be spread over all the Mining Companies in accordance with a standard formula.

Article 20

In accordance with the draft dated December 13, 1955 (Annex 19, IV to the minutes dated December 13, 1955 [registered under No. 1268/1955, at the offices of Ewald Leveloh, notary public, Essen]), the Mining Companies may, after the setting-up of the Standards Committee, take a decision, in connection with the balancing of employment, concerning the institution of joint financial arrangements whereby,

should the measures taken under Article 15 above in respect of the allocation of the orders on the books of the Ruhr Coal Selling Agencies not suffice to bring about as equitable as possible a degree of employment in the Mining Companies in relation to a specified basic tonnage, the enterprises concerned may raise a levy in order to allow to enterprises where employment is lower a payment of up to DM 5.00 for every ton of their reduction in sales.

PART FOUR

GENERAL PROVISIONS

Article 21

1. In accordance with Articles 47 and 65, 3 of the Treaty, the High Authority will exercise constant supervision, to the extent it may deem necessary, to determine whether the Mining Companies, the Joint Office, the Standards Committee and the joint arrangements instituted under this decision are functioning within the terms herein stated and in particular, within the restrictions, conditions and enjoinments so contained, and whether the measures introduced by the parties concerned in their organization are essential to the achievement of the purpose defined in Article 65, 2, *a* of the Treaty, while not contravening the provisions of the Treaty or involving more extensive restrictions than are necessary to their purpose.

2. The High Authority reserves the right to fix the practical details of its method of supervision.

Article 22

In issuing this decision, the High Authority is relying on the Mining Companies to take action, in accordance with their statement contained in Section 8 of the supplementary protocol dated February 6, 1956 (registered under No. 156/1956, at the offices of Ewald Leveloh, notary public, Essen), and with the correspondence dated February 10 and 15, 1956, to set up an Advisory Committee with the following membership and duties:

1. The members of the Committee shall be
 - nine representatives from the Mining Companies forming the Ruhr Coal Selling Agencies,
 - nine representatives from the workers employed by those Mining Companies,
 - nine representatives from the coal consumers and dealers in the different Community countries.

2. Representatives of the German Federal Government and of the High Authority shall have the right to participate in the meetings of the Committee.

3. The Committee shall meet not less than three times in the course of any coal year. The Chairman may convene the Committee for additional meetings. He must convene it at the request of eight or more members.

4. At the meetings of the Committee, the problems confronting the Joint Office shall be stated, the principles and reasons for co-ordinatory measures of the Joint Office set forth, and the probable effects of such measures discussed.

Article 23

This decision shall come into force upon notification to the Mining Companies. It shall cease to have effect on March 31, 1959.

This decision was deliberated and adopted by the High Authority at its session on February 15, 1956.

For the High Authority,

FRANZ ETZEL,

Vice-President.

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